SENATE—*Friday, October 25, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 10:45 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN GLENN, a Senator from the State of Ohio.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Bless the Lord, O my soul, and forget not all his benefits: Who forgiveth all thine iniquities; who healeth all thy diseases; Who redeemeth thy life from destruction; who crowneth thee with lovingkindness and tender mercies. * * *—Psalm 103:2–4.

Gracious Father in Heaven, thank You for this profound encouragement from the Psalms, assurance of Your forgiveness, Your healing, Your protection. The Senators have been through a great deal, emotionally as well as intellectually, these past 2 weeks. Some have been wounded; all have had to deal with the struggle of conscience versus objectivity and political expediency. An angry, cynical public has raised its voice in an unprecedented way. The press and media have been relentless in their attempts to penetrate to the very core of private as well as public affairs.

Men and women in power are not supposed to acknowledge weakness or vulnerability; they are certainly not free in the present atmosphere to confess sin. So they suppress feelings, stuff guilt and uncertainty, try to put a lid on a potential explosion. Loving God, cover each Senator, every staff member and their families with grace and mercy and, where needed, deep healing. Dissolve fear, pride, anger, unforgiveness, and bind us together in love.

In His name who is infinite love incarnate. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 25, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN GLENN, a Senator from the State of Ohio, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. GLENN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning following the time for the two leaders, there will be a period for morning business not to extend beyond 11:30 a.m., with a number of Senators to be recognized to address the Senate for specific time limitations.

Mr. President, I intend, shortly, to meet with the distinguished Republican leader to consider the schedule for the remainder of the day and for early next week.

I am heartened by the compromise agreement that was reached with respect to the civil rights bill, which was discussed at a meeting of Democratic Senators just concluded and for which there was expressed widespread support. And I am hopeful now that we are going to be able to proceed to a prompt disposition of this bill.

I have in mind a proposed schedule of events for the next few days, but as is my practice, I want to consult with the distinguished Republican leader and review it with him before making any announcement. But I hope and expect to be able to make an announcement in that regard in the very near future.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time, and I yield the floor.

RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the Republican leader is recognized.

CIVIL RIGHTS COMPROMISE BECOMES A REALITY

Mr. DOLE. Mr. President, nearly 2 years ago, we began a rough-and-tumble journey through the thickets of title VII and disparate impact law.

After one veto, one attempted veto override, several floor votes, and lots of overheated rhetoric, we finally end this journey with a compromise.

Last night, Senator JACK DANFORTH, White House Chief of Staff John Sununu, and White House Counsel Boyden Gray put the finishing touches on a compromise agreement that President Bush will accept.

This agreement will remain firm if no politically attractive—but politically unacceptable—amendments are adopted, particularly an amendment lifting the caps on damage awards.

I understand the Senator from Colorado [Mr. WIRTH] may be addressing that. That may be the subject of separate legislation. That itself would remove a major roadblock.

The compromise is not perfect. It will not satisfy everyone.

The caps on damages may be fairly reasonable—but a bit too high.

The language on Wards Cove may be too broad to some, or too narrow to others.

But that is the nature of a compromise, and that is the best we can do under the circumstances.

What we have done is produce an agreement that—once and for all—will untie the Gordian knot of civil rights—and without producing quotas.

Mr. President, it is obvious that my Republican colleague from Missouri, Senator DANFORTH, deserves our praise for working tirelessly to get where we are today.

Without a doubt, Senator DANFORTH'S leadership has been the engine driving the compromise effort. This engine has now come into the station.

And let us not forget President Bush, who has time-and-time again stated that he was prepared to accept a fair and responsible compromise.

Well, today, with this agreement—a historic agreement—President Bush has delivered on his promise.

We can have a Civil Rights Act of 1991.

The time for divisiveness has ended, and the time for healing has begun.

Mr. President, I ask unanimous consent that the agreement on the Civil Rights Act be printed in the RECORD immediately following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINAL COMPROMISE, OCTOBER 24, 1991
(Amendments to S. 1745)

1. Purposes:

On page 2, strike lines 18–22 and substitute the following:

"(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989).".

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

2. Wards Cove—Business Necessity/Cumulation/Alternative Business Practice:

On page 8, strike lines 17–24.

On page 9, strike lines 1–9.

On page 9, strike lines 19–24, on page 10, strike lines 1–20 and substitute the following:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

"(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to a different employment practice and the respondent refuses to adopt such alternative employment practice.

"(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subsection (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision-making process are not capable of separation for analysis, the decision-making process may be analyzed as one employment practice.".

On page 10, line 22, strike the phrase ", in whole or in significant part,".

On page 11, strike lines 1–9 and substitute the following:

"(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of 'alternative business practice'."

Exclusive Legislative History. The terms "business necessity" and "job related" are intended to reflect the concepts enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to *Wards Cove* v. *Atonio*, 490 U.S. 642 (1989).

When a decision-making process includes particular, functionally-integrated practices which are components of the same criterion, standard, method of administration, or test, such as the height and weight requirements designed to measure strength in *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977), the particular, functionally-integrated practices may be analyzed as one employment practice.

3. Expert Fees. Add section authorizing expert fees in Section 1981 cases.

4. Damages. Technical changes pertaining to ADA coverage and application to disparate impact cases.

Revise caps on compensatory and punitive damages as follows:

Cap on damages and size of employer:

$50,000: 16–100 employees.

$100,000: 101–200 employees.

$200,000: 201–500 employees.

$300,000: more than 500 employees.

WOMEN IN THE SENATE

Mr. DOLE. Mr. President, we are hearing again and again from women's organizations who insist that there be more women in the U.S. Senate, who insist that things would have been different had there been a woman on the Senate Judiciary Committee.

My question, Mr. President, is where were these organizations in 1990? Where were they in 1988? Where were they in 1986? Where were they in 1984?

Time and again, Mr. President, Republicans have nominated qualified women for the Senate—women like Claudine Schneider in Rhode Island—Pat Sakai in Hawaii—Judy Koehler and Lynn Martin in Illinois—Susan Engeleiter in Wisconsin—Christine Whitman in New Jersey—Nancy Hoch in Nebraska.

And time and again, Mr. President, the liberal women's organizations such as the National Women's Political Caucus, have done everything possible to defeat these candidates.

As the Wall Street Journal correctly pointed out in an editorial yesterday, these "groups are not interested in electing women to office. They want to elect liberals."

Let me be clear in saying, Mr. President, that there are many fine women's organizations in America—organizations which did support these candidates, and which supported my colleague, Senator KASSEBAUM, in her three successful campaigns for the Senate.

But the lesson is clear, Mr. President, if the liberal organizations had been more concerned with electing women to the Senate, and less concerned with electing candidates who march lockstep with their liberal philosophies, then there very well would be more women serving in the U.S. Senate.

So before these groups point the finger of blame, Mr. President, they should take a good look in the mirror.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro termpore. The majority leader is recognized.

CIVIL RIGHTS COMPROMISE

Mr. MITCHELL. Mr. President, I want to join in commending Senator DANFORTH for his efforts in this area. I want to also add Senator KENNEDY to the list of those who deserve commendation. Senator KENNEDY was the original author of the legislation, has been the leading proponent of the legislation, and was deeply involved in all of the negotiations and discussions that have brought us to this point. Both he and Senator DANFORTH have worked tirelessly, especially in these last few days, almost around-the-clock negotiations, culminating in this agreement.

What this agreement does is to restore the legal standard established by the Supreme Court in 1971 in the case of Griggs versus Duke Power. That was the law of this country for 18 years until the current Supreme Court, without any rational justification, and in what in my judgment was a clearly erroneous decision, reversed that ruling in the case of Wards Cove Packing Co. versus Atonio in 1989.

All the sponsors of this legislation have ever sought to do is to restore the standard in the Griggs case to the law and to overturn the unfortunate and unwise Supreme Court decision in the Wards Cove case of 1989. That is all that has been sought and that is what now has been attained.

This could have been achieved a year and a half ago and avoided all of this long, bitter, divisive, rancorous debate. The President has now agreed to that which he refused to agree to a year and half ago, that which he refused to agree to a year ago, and that which he refused to agree to 6 months and 6 days ago.

I cannot speculate on what the motives are for his reversing his position. But I can say that Senator DANFORTH, a Republican, Senator KENNEDY, a Democrat, deserve our gratitude, the gratitude of the Nation for forging this compromise and for their persistence and tenacity in achieving this result. I only wish the President had been willing a year and half ago to do that which he is now willing to do, restore the Griggs standard to the law. We would all have been spared a long and painful ordeal.

Mr. President, I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for consideration of morning business for not to extend beyond the hour of 11:40 a.m., with Senators permitted to speak therein.

The Senator from Colorado, Mr. WIRTH, is permitted to speak up to 15 minutes and is recognized.

ENDING NUCLEAR MATERIALS PRODUCTION

Mr. WIRTH. Mr. President, it was almost one month ago to the day when the President outlined his vision of a new nuclear relationship between the United States and the Soviet Union. President Gorbachev responded 8 days later with an equally sweeping set of proposals.

Administration sources now suggest that President Bush will propose a permanent ban on the production of uranium and plutonium for nuclear weapons by the United States and the Soviet Union when he meets with Gorbachev in Madrid next week. This morning's Washington Post reports that Secretary of Defense Cheney last week sought to block a Bush initiative on ending production of weapons-grade uranium and plutonium.

I deeply hope that the President will continue to demonstrate real leadership on nuclear disarmament by proposing a ban on fissile material produc-

tion in Madrid. I and several of my colleagues here in the Senate and in the House have been urging just this course of action since 1989. It made sense then to pursue a fissile material ban, and it makes sense now.

The United States has not produced any weapons-grade uranium since 1964, and currently has a stockpile of approximately 500 metric tons. This stockpile will increase further with the withdrawal of thousands of tactical nuclear weapons. We are currently awash in plutonium with a stockpile of roughly 100 metric tons, compared with an estimated Soviet stockpile of about 115 metric tons.

The cold war is over. We do not need larger nuclear stockpiles, nor can we afford them. The U.S. Government has not produced any new materials for nuclear weapons since 1988 due to serious safety concerns at Savannah River. The Department of Energy does not need any more fissionable material for weapons production.

The Soviets have called for negotiations on this subject since the early 1980's. In 1989, President Gorbachev announced that the Soviet Union would cease uranium production and called for talks on a mutual and complete ban on fissile material production for nuclear weapons. Converting our current de facto unilateral moratoria into a bilateral, verifiable arms control regime would halt all Soviet plutonium and uranium production. Not only will we stand to save significant sums of money if we can reach a negotiated fissile material ban, but we also will contribute importantly to strategic nuclear arms control efforts.

A negotiated ban on fissile material production would contribute enormously to the verification requirements of deep cuts in strategic weapons. To provide confidence that withdrawn nuclear warheads would not be replaced at a later date—through overt breakout or clandestine deployment—with newly produced supplies, a verifiable regime restricting the production of fissile materials would be needed.

A permanent ban on nuclear weapons material production by the United States and the Soviet Union would also strengthen the nonproliferation regime, and influence other nuclear weapons states, such as China, France, and the United Kingdom, to consider a comparable ban. Most importantly, a fissile production ban among nuclear have states would significantly increase our credibility and our credentials in pressing for a far-reaching nonproliferation regime in the 1990's and beyond.

Mr. President, I hope that the President will belatedly take up cause of a plutonium and uranium production ban. I note that many in this Chamber, including myself and Senators KENNEDY, HARKIN, HATFIELD, and others have urged this course of action since 1989 and we were opposed in these efforts by the administration.

Mr. President, I ask unanimous consent that a summary of proposals relating to the fissile production ban prepared by the Congressional Research Service be printed in the RECORD following my remarks, and that a side-by-side comparison of Bush administration objections to our earlier efforts at such a ban and our responses to those criticisms also be printed in the RECORD, along with various newspaper articles.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PROPOSALS FOR ENDING U.S. AND SOVIET PRODUCTION OF FISSILE MATERIALS FOR NUCLEAR WEAPONS

SUMMARY

The proposed International Plutonium Control Act (H.R. 2403 and S. 1047) urges President Bush to seek negotiations with the Soviet Union on a verifiable agreement for an end by both countries to the production of plutonium and highly enriched uranium for weapons purposes. A somewhat less demanding version of the proposal was later attached to the defense authorization in the House (the Senate in its version of the defense authorization (S. 1352) included an amendment by Senator Kennedy to require the Secretaries of Defense and Energy and the Director of Central Intelligence to report to Congress on "the on-site monitoring techniques, including inspection arrangements, and national technical means, that would be used to verify Soviet dismantlement of nuclear warheads (and) the end use and purpose of any fissile materials produced or that are recovered from the dismantlement process . . .". Both amendments were dropped in Conference. However, the Conference report recognized the need for a study on the implications of a ban on production of fissile materials and directs the President to submit such a report not later than July 15, 1990.

The proposals come at a time when DOE production of plutonium for weapons has been shut down since 1988 for safety reasons.

Supporters of the proposal to end U.S. and U.S.S.R. production of fissile materials for weapons point to expected benefits from another step towards nuclear arms reduction, from savings in capital and operating costs for the United States, and from reducing risks to the public health and safety and the environment by ending the operation of old production reactors in both countries.

The Bush Administration and others oppose the idea because they believe it could compromise the ability of the United States to quickly increase its nuclear arsenal in the future, and because it could detract from other, more important, arms control negotiations.

Fundamental issues for Congress are: (1) how much and in what ways any U.S.-Soviet agreement to end production of fissile materials would affect U.S. national security, arms control, and other national interests; and (2) how reliable would verification have to be, and is such verification practicable.

ISSUE DEFINITION

The proposed International Plutonium Control Act (H.R. 2403—Wyden and S. 1047—Kennedy) urges the President to seek negotiations with the Soviet Union on a verifiable agreement for an end by both countries to the production of plutonium and highly enriched uranium for weapons purposes. A somewhat less demanding version of the proposal was later attached to the defense authorization in the House (the Wyden amendment to H.R. 2641). The Bush Administration opposed the idea and it was dropped from the legislation in Conference. Nonetheless, the idea seems likely to persist. One fundamental issue for Congress is how much and in what ways any such agreement would affect U.S. national security, arms control, and other national interests. Another is how reliable would verification have to be.

BACKGROUND AND ANALYSIS

Background

For several decades the United States and the Soviet Union alternatively have proposed reductions or cutoffs in production of fissile materials for nuclear weapons. The idea dates back to President Eisenhower's Atoms for Peace proposal of 1953. Various U.S. Administrations up to the Reagan presidency have proposed it to the Soviet Union, with no response. In the 1980s, the Soviet Union began to make such proposals, but they were not acceptable to the Reagan Administration, which was interested in a nuclear arms buildup. (John Taylor of the Sandia National Laboratory has traced this history; see references.) Other countries also have advanced the idea. Sweden, for example, at the general conference of the International Atomic Energy Agency, in 1984 called on the nuclear powers to "embrace the complete cessation of the production of fissionable materials for weapons purposes."

On May 29, 1990, 54 American diplomats, scientists and other experts wrote to President Bush and President Gorbachev calling on them to reexamine and to take steps to end the "unrelenting race to produce yet more ingredients for nuclear weapons." They said that such a halt to production of fissile materials and tritium "need not await a complicated formal agreement. It can be achieved by reciprocal unilateral steps." (A copy of the letter is available from the issue brief author.)

Materials for Nuclear Weapons

Three nuclear materials are used to make nuclear weapons: the heavy element isotopes plutonium-239 (Pu-239) and uranium-235 (U-235), and tritium, an isotope of hydrogen. Pu-239 and U-235 are the fissile materials that provide the "yield," or energy released by a nuclear weapon. Of these, for technical reasons, weapons designers prefer Pu-239 for most applications. Tritium, when added in small quantities, can increase, or "boost," the explosive yield of a given amount of Pu-239 or U-235.

All three materials are radioactive, which means that occasionally their atoms emit radiation and become atoms of other elements. This is called "radioactive decay" and is measured by a distinctive "half-life" for each isotope, which is the time required for half of the original number of atoms to decay. Since the half-life of Pu-239 is 24,400 years and that for U-235 is 713 million years, for all practical purposes these materials will last indefinitely. Tritium, with its short half-life of 12.26 years is another matter; it decreases about 5.5% annually through decay.

Production of Plutonium: Plutonium exists in nature in only minuscule amounts. When needed in quantity, it can be made by bombarding atoms of U-238 with neutrons, usually in a nuclear reactor. Some U-238 atoms capture neutrons and are transmuted mainly into Pu-239, but some become Pu-240 and other plutonium isotopes that are unde-

sirable in nuclear weapons. The longer uranium is exposed to neutrons, the more plutonium is produced, but the greater the concentration of Pu-240. The length of exposure for uranium in a reactor is described in terms of the amounts of "burnup." The neutron-exposed uranium (or "spent fuel"), is removed from the reactor, chopped up, dissolved in acids, and the plutonium and residual uranium are chemically separated. This is called "reprocessing," or "chemical separation." Alternatively, the spent fuel can be sent to a burial site without recovering its plutonium.

Reactors used primarily to produce plutonium for weapoons are called "production reactors." Both the United States and the Soviet Union have such reactors and associated reprocessing plants. Since 1988, DOE production of plutonium for weapons has been shut down for safety reasons. Both countries also have many large civilian nuclear power plants whose spent fuel contains much plutonium. This plutonium is not desirable for weapons because of its comparatively high concentration of Pu-240 caused by long exposure or "high burnup" of the nuclear fuel. Although in principle a nuclear explosive could be designed to use this low-grade plutonium, weapons designers for technical reasons prefer highly pure Pu-239 plutonium. No nuclear weapons state currently uses low-grade plutonium to make its nuclear weapons. Nonetheless, a new technology called "laser isotope separation" (LIS) may make it possible to upgrade low-grade plutonium by removal of much of the undesired Pu-240. However, DOE recently decided not to fund construction-size Special Isotopes Separation plant in its F1990 budget and not to start up a pilot LIS unit of its Lawrence Livermore Laboratory. (See Issue Brief 89062).

Production of Uranium 235: Some U-235 exists in nature, but it is mixed with U-238, and constitutes only 0.7% of normal uranium. It is possible to "enrich" the uranium to make the U-235 content 90% or more, which is the concentration needed for nuclear weapon applications. Two technologies now in use and a third under development can produce highly enriched uranium. DOE enrichment plants use the gaseous diffusion process in which gaseous uranium-hexafluoride is diffused through many porous barriers with some separation at each stage. Uranium gas centrifuges can also be used and have been developed in Europe and Japan. DOE also had a major centrifuge project, but abandoned it in favor of developing laser isotope separation. The Soviet Union uses gaseous diffusion and is developing centrifuge technology. Other nuclear weapons States—China, France, and the United Kingdom—use the diffusion process. Uranium isotope separation by centrifuges is now in commercial use in Europe and is being developed by Japan and the Soviet Union. Pakistan's gas centrifuge plant is also believed by many to be capable of producing weapons-grade U-235.

Production of Tritium: Tritium is made by bombarding atoms of lithium-6 with neutrons in a nuclear reactor. The "targets" containing the lithium are removed after the desired exposure and the tritium is separated. Thus, production of tritium requires a supply of the lithium-6 isotope, a reactor, and an extraction facility.

Soviet Statements on Ending Production

The Soviet Union has said it is cutting back on production of fissile materials for weapons. During his speech of Apr. 7, 1989, in London, Soviet President Gorbachev announced that ". . . we have recently decided to cease this year the production of enriched weapons-grade uranium. . . (and) in addition to the industrial reactor for the production of plutonium shut down in 1987, we plan to shut down two other such reactors this and next year without commissioning new units to replace them." This would reduce from 14 to 11 the number of Soviet production reactors. A State Department press guidance commented that "these measures will leave the Soviets with a substantial production capability for nuclear materials. Indeed, it will not constrain their nuclear weapons program. This should not divert attention from the real issue—that of working through negotiations to reduce the level of nuclear weapons on each side."

Subsequently during a visit by U.S. Representatives and independent scientists to the formerly secret military center at Kyshtym in the Ural Mountains, the center's director announced that the Soviet government had decided to shut down all five nuclear production reactors at this site, idling two more than originally announced by President Gorbachev in London (New York Times, July 9, 1989: A1). Evgeny I. Mikerin, a senior soviet atomic energy official, said plutonium factories at other sites may also be closed if the United States and the Soviet Union conclude a new treaty limiting strategic nuclear arms (Washington Post, July 9, 1989: A1).

Again, On Sept. 26, 1989, the Soviet Union supported cessation. In his address to the U.N. General Assembly, Soviet Foreign Minister Eduard A. Shevardnadze said:

"There is an urgent need for verifiable cessation of the production of fissionable material for weapons purposes. We have declared that this year we are ceasing the production of enriched uranium and that in 1987 we closed down one reactor producing weapons-grade plutonium and that we plan to close down a few more such reactors in 1990.

"By the year 2000, all remaining reactors will have been shut down. In addition, the Soviet Union is proposing that all nuclear powers should begin preparing to conclude an accord on the cessation and prohibition of production of such material." (New York Times, Sept. 27, 1989: A12)

Congressional Views and Actions

In Congress, the idea of a fissile material cutoff goes back many years. In 1985, bills by Senator Kerry (S. 1500) and Representative Markey (H.R. 3100) called for U.S.-Soviet negotiations on a comprehensive bilateral and verifiable freeze on testing, production, and deployment of nuclear weapons. A section of each bill proposed controls on production of plutonium and highly enriched uranium, assuming certain conditions were met. No hearings were held and the bills did not emerge from committee.

More recently, on Jan. 1, 1989, Representative Leach introduced H.J. Res. 92 to provide for the contribution by the United States, the Soviet Union, and other states of nuclear materials recovered from warheads under arms control treaties to the IAEA. These materials would be used in peaceful nuclear programs in developing countries that are parties to the nonproliferation treaty. No action has been taken on this bill.

On Apr. 3, 1989, Senators Kennedy and Wirth, in a "Dear Colleague" letter, proposed a mutual and verifiable halt to the production of plutonium and highly enriched uranium for weapons. Soon afterwards, the proposed International Plutonium Control Act was introduced (S. 1047) by Senators Kennedy, Wirth, and five cosponsors. A companion measure (H.R. 2403) was introduced by Representatives Wyden, Fascell, and 86 cosponsors. The Subcommittee on Arms Control, International Security and Science of the House Committee on Foreign Affairs held two days of hearings on the proposed legislation and the Defense Nuclear Facilities Panel of the House Committee on Armed Services held a hearing on nuclear material production cutoffs as arms control measures.

On July 27, 1989, the House, by a vote of 284 to 138, approved an amendment by Representative Wyden to the Department of Defense Authorization for FY 1990 and 1991 (H.R. 2641). It urges the President to negotiate with the Soviet Union for a verifiable ban on the production of plutonium and enriched uranium for weapons and expresses the sense of Congress that the United States should establish verification arrangements that include on-site inspection of all production facilities (*Congressional Record:* 16462-16473).

The Senate, in acting on its version of the defense authorization bill (S. 1352) on August 1, approved an amendment by Senator Kennedy to require the Secretaries of Defense and Energy and the Director of Central Intelligence to report to Congress on the on-site monitoring techniques, including inspection arrangements and national technical means, that would be used to verify Soviet dismantlement of nuclear warheads, and "the end use and purpose of any fissile materials produced or that are recovered from the dismantlement process . . ." (corrected text, *Congressional Record*, Aug. 15, 1989: 17737). The Senate passed the authorization bill on Aug. 2, 1989.

The Conference Committee, however, adopted neither provision. However, the Conference report in dealing with arms control recognized the need for a report on implications for U.S. national security of any ban on production of fissile materials for weapons and said: "Accordingly, the President shall submit such a report in both classified and unclassified form to the Committee on Armed Services and the Select Committee on Intelligence of the Senate and the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives not later than July 15, 1990" (*Congressional Record*, Nov. 6, 1989: 27487.)

Analysis

The following analysis addresses what H.R. 2403, S. 1047, and the Wyden amendment would do and major issues posed by them.

Purpose of the Proposed Legislation

H.R. 2403, S. 1047, and the Wyden amendment urged the President to negotiate a mutual end to production of fissile materials for nuclear weapons. The bills make two policy statements concerning a shutdown in production of plutonium and highly enriched uranium for nuclear weapons. Both countries "should agree to forego further production of plutonium and highly enriched uranium for weapons purposes" and both should "jointly explore the feasibility of—

(A) a mutual shutdown of plutonium production reactors, chemical separation facilities, and isotope separation plants dedicated to the production of plutonium for weapons purposes; and

(B) the safeguarded operation of uranium enrichment and chemical separation facilities for nonweapons purposes."

The proposed bills "urge" the President to negotiate with the Soviet Union on a "verifiable agreement for an end by both countries to the production of plutonium and highly enriched uranium for weapons purposes."

The Wyden amendment also urged the President to seek to establish a mutual U.S.-Soviet working group to examine the technical aspects of a bilateral halt in the production of fissile materials for weapons purposes.

The proposed cutoff would:

Define Permissible Production of Nuclear Materials: The bills and the Wyden amendment in effect would permit the continued production of tritium for "stockpile replenishment;" highly enriched uranium to fuel tritium production and naval propulsion reactors; and plutonium for civil power (including possible production and use in breeder reactors).

They would also permit "activities conducted in connection with the recycling of special nuclear material from retired weapons and the recovery from scrap of the existing weapons-grade plutonium inventory" (implicitly excluding use of plutonium from civil nuclear power plants); and operation of pilot-scale isotope separation facilities "utilized exclusively for the purpose of research and development."

Provide for Exchanges of Information: The bills and the Wyden amendment also urge the President to seek agreement with the Soviet Union on two kinds of information exchange: information on the location, mission, and maximum annual capacity of their facilities essential to the production of tritium for stockpile replenishment; and a complete inventory of the facilities dedicated to the production of plutonium and highly enriched uranium for weapons purposes.

Apply Fiscal Pressure: The bills, but not the Wyden amendment, would apply pressure through the congressional power of the purse. Six months after enactment, the bills would prohibit obligation or expenditure of funds to "operate a production reactor, chemical separation facility, or isotope separation plant dedicated to the production of plutonium or weapons purposes . . ." However, the President, in effect, could waive this cutoff if at the end of 6 months he certifies to Congress that:

(1) "the Soviet Union has refused to enter in good faith into the negotiations called . . ." or

(2) "the United States is unable to determine that Soviet production reactors, chemical separation facilities, or isotope separation plants dedicated to the production of plutonium for weapons purposes have ceased operation;" or

(3) "the Soviet Union is continuing to obtain plutonium by operating civilian chemical separation plants that are not under bilateral U.S.-Soviet safeguards."

Require Verification: The bills and the Wyden amendment endorse the idea of verification in a proposed congressional finding that:

"National and cooperative technical means of verification, and safeguards against the diversion of weapons-grade nuclear materials from use in civilian nuclear facilities to use in the production of nuclear weapons, would detect attempts by the United States or the Soviet Union to produce or divert significant quantities of the current stockpiles of these materials."

The two bills would express a sense of Congress that the United States and the Soviet Union should establish verification arrangements to monitor the cessation of the production of plutonium and highly enriched uranium for weapons purposes. Verification measures mentioned include mutual inspections as necessary to verify that both countries have ceased such production; furnishing the technical equipment and personnel to safeguard civilian nuclear facilities in each country; consideration of eventual transfer of these safeguards to the International Atomic Energy Agency; and consideration of increasing their respective contributions to the International Atomic Energy Agency enough to fund the assignment of additional fully trained inspectors to each country to safeguard their civilian nuclear facilities.

The Wyden amendment would require the President to report to Congress by Apr. 30, 1990, on the "verification and technical aspects of a mutual and verifiable U.S.-Soviet Union halt in production of plutonium for weapons purposes." To this end, the President would be directed to establish by Dec. 31, 1989 a technical working group to "advise the President on the verification and technical aspects of such a halt" (*Congressional Record*, July 27, 1989: 16462).

Opposition by the Bush Administration

The Bush Administration has consistently opposed the idea of a negotiated cutoff in production of fissile materials. Dr. Kathleen Bailey, Assistant Director of the Arms Control and Disarmament Agency, said that it would:

(1) destabilize U.S.-Soviet relations by hampering the U.S. ability to produce nuclear weapons while we still rely upon them;

(2) freeze a U.S.-Soviet asymmetry in plutonium stockpiles and production facilities. The USSR has no policy to separate civil from military uses, but U.S. policy precludes DOE use of civilian plutonium except in a national emergency. The USSR has an active breeder development program, has operable reprocessing facilities, and can use its RBMK-type civil nuclear power reactors to produce tritium;

(3) not be verifiable in the Soviet Union because facilities for enrichment of uranium and for reprocessing and upgrading of plutonium (via laser isotope separation) have no distinctive signatures to be detected by national technical intelligence means;

(4) financially weaken the IAEA, which would have to double its safeguards budget because of involvement in verification of such a cutoff at a time when the United States and other major members are not allowing an increase in the IAEA overall budget;

(5) leave a serious loophole because the United States and the USSR would not allow safeguards for highly enriched uranium produced to fuel their nuclear submarines and warships;

(6) detract time and attention from other arms control negotiations with the Soviet Union.

As for the Department of Defense, typical opposition was expressed by Dr. Raymond Juzaitis of the Office of the Assistant to the Secretary of Defense for Nuclear Energy. From his viewpoint, unrestricted production of weapons materials is needed because:

(1) U.S. strategy is based on nuclear deterrence.

(2) Nuclear deterrence demands an arsenal of safe and effective nuclear weapons, with constant retirement and replacement of weapons to keep them up to date and safe.

(3) As long as the U.S. relies on nuclear deterrence, the infrastructure and stockpile, including materials production, must be kept in good order.

(4) An assured supply of fissile materials for weapons is indispensable to U.S. security. And

(5) continued production is needed as a reserve for outages in production and changes in world conditions.

Major Issues Posed by the Proposals

The idea for a joint U.S.-Soviet ending of the production of highly enriched uranium and plutonium for nuclear weapons clearly is controversial and already has raised several major issues. These include: the effect on national security and deterrence; the possibility of "breakout"; the potential effect on arms control and negotiations; and verification issues.

National Security and Deterrence: The potential effect on U.S. nuclear deterrence, and thereby on U.S. national security, of a long-term ending of production of plutonium and highly enriched uranium for nuclear weapons would depend upon how many weapons will be needed in the future, when they will be needed, and how much fissile material will be required to make them. The present debilitated status of U.S. nuclear material production facilities, the availability of material salvaged from weapons withdrawn from the stockpile, and the expected future direction of nuclear arms reduction would reduce the effect of a shutdown agreement on national security.

In the short term, the proposed shutdown would appear to have little effect on the U.S. capability to make more nuclear weapons. U.S. production of highly enriched uranium for weapons stopped many years ago and U.S. production of weapons-grade plutonium stopped in August 1988 because of safety concerns at DOE dedicated production reactors. There is little expectation that DOE production of weapons-grade plutonium will resume for at least several years. If any reactors are restarted quickly, as recently reported (Washington Post, Aug. 31, 1989: A2), they will be used to produce tritium to maintain the existing strategic nuclear arsenal. So the United States continues a de facto unilateral cutoff.

The proposed ending of production would not stop the United States or the Soviet Union from taking uranium or plutonium from existing warheads and refabricating it into new warheads of different design. In this way, both countries could change the mix of their various nuclear weapons without producing more plutonium, or U-235 for this purpose. Note however, DOE's plutonium facility at Rocky Flats is shut down; this has stopped U.S. recycling of plutonium.

In the longer term, if the United States and the Soviet Union negotiate a deep cut in their nuclear weapons including the warheads, but permit reuse of recovered fissile materials for new weapons, then a continued production cutoff would have little effect on warhead production because there would be more material available than needed. If, on the other hand, a future deep-cut agreement required the dismantling of warheads and barred the reuse of recovered fissile materials for weapons, then a production cutoff could limit new weapons production. This would be seen by some as favoring the Soviet Union, because of its larger conventional armed forces, unless these also are reduced under a future treaty.

Possibility of "Breakout": If an end to production of fissile materials for weapons was agreed to, there would be concern that either side might seek an advantage by clandestinely operating ostensibly shut-down facilities. Either side could also try to divert nuclear materials from nonweapons military uses or civil nuclear power uses to make more warheads, or to build clandestine production facilities. A worst-case analysis would have the Soviet Union maintain its shut-down facilities ready for immediate restart while the United States would allow its

facilities to fall further into disrepair and become inoperable. In this case, the Soviet Union could have a lead of at least several years in production of new weapons materials if it decided to withdraw from or violate the agreement. On the other hand, considering the economic and political problems of the Soviet Union, it is by no means certain that it would be any more likely than the United States to keep its shut-down plants ready for prompt restart, or to build replacements. Also, it takes time to produce new plutonium, chemically separate it, and fabricate it into warheads. Since such a resumption of production would be difficult to keep secret, the United States would likely have some time to respond.

From another point of view, since DOE stopped production of plutonium and tritium in 1988, the Soviet Union is virtually in a "breakout" situation now. It continues to produce weapons-grade plutonium with which it can make more warheads or build up its inventory of plutonium for a future expansion. So far, this has not raised a loud alarm in Washington.

Pros and Cons for Early Negotiation of a Cutoff: The Bush Administration would prefer to talk about a cutoff after major arms control agreements have been negotiated. On the other hand, some quarters of Congress and the arms control community would begin cutoff talks now as a way to build the confidence needed to conclude future deep cuts in nuclear arsenals.

Some reasons in favor of a cutoff are that it could:

Increase confidence in verification of other agreements.—A successful cutoff could help negotiation of other agreements by demonstrating the reliability of national technical means of verification and of bilateral and international inspections for verification, especially in negotiating on disposal of nuclear materials from dismantled nuclear warheads. A production cutoff, by limiting the amount of nuclear materials available, would also constrain breaking out of treaties that limit the numbers of nuclear weapons. However, a bad experience with verification of a cutoff could undermine negotiations of other arms control agreements.

Strengthen the precedent for intrusive inspections.—The agreement proposed by Congress would provide for intrusive on-site inspections to verify that dedicated facilities remain shut down and that nuclear materials are not diverted to weapons purposes. Negotiating and operating experience with such a cutoff combined with further experience from INF inspections could set a precedent that would help make verification of other arms control agreements more acceptable.

Improve the climate for extension of the Non-Proliferation Treaty.—In 1995, the Treaty is up for extension, which will require approval by a majority vote of its members. While the United States clearly wants extension on terms favorable to its interests, it has been criticized by many nonnuclear-weapons members for moving too slowly on nuclear arms control. A successful cutoff could dull such criticisms and increase U.S. influence at the extension conference.

On the other hand, negotiating an end to fissile materials production for weapons could:

Detract from other arms control negotiations.—The President's arms control agenda already includes the NATO and Warsaw Pact negotiations on conventional forces in Europe; Strategic Arms Reduction (START); defense and space talks, verification provisions of the still pending Threshold Test Ban Treaty (TTBT) and Peaceful Nuclear Explosive Treaty (PNET); a global ban on chemical weapons; monitoring implementation of the INF treaty; and stopping the spread of missiles and nuclear weapons. For the United States to open negotiations to end production of fissile materials for nuclear weapons could divert time, attention and staff from other negotiations that might have a more direct bearing on U.S. national security interests.

Cause the United States to negotiate from a weak position.—The Soviet Union would enter negotiations while still producing plutonium and tritium for nuclear weapons whereas United States production would be shut down. This imbalance, or asymmetry, could be seen as putting the United States into a weakened negotiating situation, and hampering the negotiation of a treaty favorable to U.S. interests.

Verification Issues: The proposed cutoff would require reliable verification that dedicated production facilities will remain shut down and that nuclear materials produced for permitted uses are not diverted to make nuclear weapons. The bills provide few details about and standards for verification, and the Bush Administration has questioned verifiability. Some of the notable questions about verification of an agreement to end production include the following:

How good does verification have to be?—Verification that dedicated production facilities remain shut down could be done by a combination of national technical means and on-site inspection supplemented by tamperproof seals and monitoring systems. Verification that clandestine facilities do not exist is probably beyond the scope of an agreement to end production. Instead it would have to rely upon a combination of negotiated rights to inspect sites suspected of violations (including surprise inspections), national technical means, and other types of intelligence. Verification that nuclear materials are not diverted from nonweapons military uses (such as naval reactor fuel) or from civil nuclear power appears to be practicable if some uncertainty is acceptable. Inescapable errors in measurements of bulk materials and analyses limit the accuracy of verification to about one percent at best. A key decision would be how sensitive and accurate the verification would have to be. For example, should the standard require reliable detection of diversion of enough material from naval and civil power uses in the United States and the Soviet Union to make one warhead, or 10, or 100, or 1,000? Some would say that since the U.S. and Soviet arsenals each have over 20,000 weapons, that even material to produce 1,000 weapons is not militarily significant. Others would say that verification for nuclear-weapons States should meet the same standard of being able to detect diversion of enough material to build one warhead as that used for nonnuclear-weapons States.

Who should verify for the United States?—The bills called for the United States and the Soviet Union to "establish verification arrangements to monitor the cessation of activities . . ." and to "consider eventually transferring the safeguards mission to the International Atomic Energy Agency." Nothing else is said about organization for verification. The Wyden amendment was somewhat more specific about what should be monitored, but specifies no organization. Still, as noted earlier, it would have required the President to report to Congress on verification and technical aspects of a mutual and verifiable halt in production, and would direct the President to establish a U.S. technical working group to advise him on the verification and technical aspects of such a halt.

Direct U.S. verification that certain facilities remain shut down could be assigned to a new agency or to an existing department or agency. For example, the U.S. Nuclear Regulatory Commission has a well established inspection service familiar with nuclear installations. Also, the U.S. On-Site Inspection Agency (OSIA), which was established within the DOD, is organized for and experienced with inspections within the Soviet Union to verify dismantling or destruction of nuclear missiles. As for international verification, this function could not be assigned to the IAEA unless its statute could be amended to authorize it to safeguard military as well as civilian nuclear materials and facilities.

Verification that highly enriched uranium produced in the Soviet Union for naval fuel is not diverted could be assigned to a new or existing agency or to the IAEA if its statute is amended. Among existing U.S. agencies, DOE and NRC have experience in verifying nuclear materials accounts. However, OSIA would have to learn the verification systems and recruit and train staff for this work.

Similarly, verification that Soviet nuclear materials are not diverted from civil nuclear power could be assigned to a new or existing U.S. agency or to the IAEA. Here, too, the agencies with some experience with nuclear materials are the DOE and NRC. OSIA would have to train and staff for this function. The IAEA has the organization, systems, and experience to perform this function in the Soviet Union and in the United States. However, the IAEA probably would need a substantial increase in the number of its inspectors and funding for its safeguards operations. Whether the verification is assigned to national organizations, or perhaps a joint U.S.-Soviet organization or to the IAEA, both governments would have to establish and maintain a national accountability system for production, use and disposal of nuclear materials. Such a system has been organized in the United States, but probably not in the Soviet Union. Similar questions about who would verify U.S. shutdown face Soviet officials.

How much would verification cost?—There is little information on the overall costs of verification. One indicator can be found in the $100 million annual budget of the OSIA. Another is the IAEA's safeguards budget for 1990 of $53 million, which funds inspection of 193 power reactors and a handful of reprocessing and enrichment plants. If the United States were to put all of its 108 nuclear power plants under full IAEA safeguards and the Soviet Union were to do likewise for its 56 nuclear power plants, the IAEA safeguards workload would approximately double. Somewhat more would be needed if the United States and the Soviet Union were to arrange to place their naval nuclear fuel under IAEA safeguards.

LEGISLATION

H.R. 2403 (Wyden)/S. 1047 (Kennedy):

Encourages negotiations between the United States and the Soviet Union to establish mutual and verifiable restrictions on the production of plutonium and highly enriched uranium for nuclear weapons purposes. H.R. 2403 introduced May 18, 1989; referred jointly to Committees on Foreign Affairs and Armed Services. S. 1047 introduced May 18, 1989; referred to Committee on Foreign Relations.

H.R. 2461, Section 3141:

The Defense Authorization for FY 1990 and 1991. The Wyden amendment urges the Presi-

dent to negotiate with the Soviet Union for a verifiable ban on the production of plutonium and enriched uranium. Agreed to by the House, July 27, 1989, by a vote of 284 yeas and 138 nays.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Arms Control, International Security and Science. International Plutonium Control Act—H.R. 2403. Hearing, 101st Congress, 1st session. June 20, 1989. Washington, U.S. Govt. Print. Off., 1990. 338 p.

FOR ADDITIONAL READING

Albright, David H., Tom Zamora, and David Lewis. Turn off Rocky Flats. Bulletin of the atomic scientists, June 1990: 13–20.

Donnelly, Warren H. Cutoff of production of nuclear explosive materials for use in nuclear weapons. Unpublished CRS memo. May 22, 1978, 12 p. (copies available from the author).

Epstein, William. A ban on the production of fissionable material for weapons. Scientific American, July 1980: 31–39.

Taylor, John M. Restricting production of fissionable material as an arms control measure—An updated historical overview. Albuquerque, NM.: Sandia National Laboratories. October 1988, 48 p. Sandia report SAND87-0901.

Weinstock, E.V., and Fainberg, A. Verifying a fissile-material production freeze in declared facilities with special emphasis on remote monitoring. In arms control verification: the technologies that make it possible. Ed. Kosta Tsipis et al. Washington: Pergamon-Brassey's International Defense Publishers, 1986, pp. 309–322.

CHRONOLOGY

07/15/90—Report due to Congress from the President on implications for U.S. national security of a ban on the production of fissile materials for weapons purposes. (Required by the conference report on the DOD authorization for FY 1990–1991, H. Rep. 101–331.)

05/23/90—Washington. Fifty four American diplomats, scientists and other experts wrote to President Bush and to President Gorbachev urging them to stop the production of fissile materials and tritium for nuclear weapons.

12/15/89—The U.N. General Assembly passed a resolution (A/RES/44/116H) calling for the prohibition of the production of fissionable material for weapons purposes, 147–1. (Arms Control Reporter, 1990: 850.285)

The U.N. General Assembly passed a resolution (A/RES/117D) calling for a comprehensive nuclear arms freeze and cessation of production of fissionable material for weapons purposes, 136–13. (Arms Control Reporter, 1990: 850.285)

11/06/89—The House and Senate conference Committee on the Department of Defense Authorization Act did not adopt the provisions of either bill, but did call for the President to report to Congress by July 15, 1990, on implications for U.S. national security of a ban on the production fissile materials for weapons purposes (H. Rept. 101–331).

09/27/89—United Nations. Soviet Foreign minister Eduard A. Shevardnadze in his address to the U.N. General Assembly supported a verifiable cessation of the production of fissile materials for weapons. (New York Times, Sept. 27, 1989: A12).

07/27/89—The House, by a vote of 284 to 138, approved the Wyden amendment to the Defense Authorization for FY 1990 and 1991 (H.R. 2461) that urges the President to negotiate with the Soviet Union for a verifiable ban on the production of plutonium and enriched uranium for weapons and that expresses the sense of Congress that the United States should establish verification arrangements that include on-site inspection of all production facilities (Congressional Record: 16462–16473).

07/20/89—Representative Broomfield opposed H.R. 2403 (Congressional Record: 15692–15693).

07/12/89—Senator Dole argued against the proposed nuclear materials production cutoff (Congressional Record: 14250–14251).

07/08/89—Soviet representatives informed visiting U.S. Representatives that the Soviet government had decided to shut down all five plutonium production reactors at its secret military center at Kyshtym in the Ural mountains and that other plutonium production reactors might be shut down if the United States and the Soviet Union conclude a new nuclear arms limitation treaty (Washington Post, July 9, 1989: A1).

06/20/89—The Subcommittee on Arms Control, International Security and Science, House Committee on Foreign Affairs, held a hearing on the International Plutonium Control Act.

06/06/89—The House Committee on Armed Services, Defense Nuclear Facilities Panel, continued hearings on nuclear material production cutoff as an arms control mechanism.

05/23/89—The House Committee on Armed Services, Defense Nuclear Facilities Panel, held a hearing on nuclear material production cutoff as an arms control mechanism.

05/18/89—The proposed International Plutonium Control Act was introduced in the Senate by Senators Kennedy, Wirth and five others as S. 1047, and in the House by Representatives Wyden, Fascell and 86 cosponsors as H.R. 2403.

04/07/89—Soviet President Gorbachev announced that the Soviet Union would cease production of enriched weapons-grade uranium, had shut down one plutonium production reactor in 1987, and planned to shut down two other such reactors in 1989 and 1990 without replacing them.

04/03/89—Senators Kennedy and Wirth in a "Dear Colleague" letter invited support for a bill to create the opportunity for a mutual and verifiable halt to the production of additional plutonium and highly enriched uranium for nuclear weapons, although permitting continued production of tritium to maintain existing warheads.

01/24/89—Representative Leach introduced H.J. Res. 92 to provide for the contribution by the United States and the Soviet Union and other states of nuclear materials recovered from warheads under arms control treaties. The materials would be used in IAEA peaceful nuclear programs in developing states which are parties to the Treaty on Non-Proliferation of Nuclear Weapons.

A SIDE-BY-SIDE COMPARISON OF ACDA AND CONGRESSIONAL RESPONSES TO QUESTIONS ABOUT THE INTERNATIONAL PLUTONIUM CONTROL ACT OF 1989

(S. 1047/H.R. 2403)

(Recently the Director of Congressional Affairs for the Arms Control and Disarmament Agency (ACDA) distributed a set of "Talking Points" in the form of a set of questions and answers on the International Plutonium Control Act. ACDA's statements in these Talking Points are misleading and contain numerous errors of fact and analysis. The attached side-by-side comparison provides a detailed critique of ACDA's talking points:)

QUESTIONS AND ANSWERS PERTINENT TO H.R. 2403/S. 1047 INTERNATIONAL PLUTONIUM CONTROL ACT

Q1. Do we have the technology to detect clandestine Soviet production of fissile materials for nuclear weapons?

A. No. Laser isotope separation—which can be used either to enrich uranium, or to separate plutonium for weapons purposes—is particularly hard to detect. Other types of facilities for enriching uranium, chemical exchange and gas centrifuge, could also be used for clandestine production with little risk of detection.

The Senate-House sponsors of S. 1047/H.R. 2403 answer ACDA's questions about the International Plutonium Control Act

ACDA Question 1: Do we have the technology to detect clandestine Soviet production of fissile materials for nuclear weapons?

Response: The problem of positively identifying Soviet attempts to construct and operate clandestine fissile material production facilities can not be reduced to a simple assessment of whether we possess adequate remote detection technology. The Administration response ignores at least two other principal factors that are involved: the amount which defines a "significant" or "trigger quantity" of the material being monitored, and the degree of suspect site inspection afforded under the proposed agreement.

ACDA's answer to this question also considerably undervalues both current U.S. space-based detection capabilities as well as the indirect signatures that would be created by a clandestine production program of any significant size, such as raw material consumption, transportation flows, and utilization of technical personnel. Indeed, the entire Soviet nuclear materials production program for weapons has been clandestine since its inception, and this extreme secrecy has not prevented the United States from learning a great deal about it.

More recently, the Soviet Union has begun to open up its nuclear materials production complex to the outside world, and has pledged complete disclosure and inspection of all facilities in the context of an agreement to cut off production for weapons purposes. The proposed legislation would require such Soviet disclosure in any case.

ACDA expresses concern about U.S. abilities to detect construction and operation of a hypothetical Soviet laser isotope separation plant, but conveniently fails to specify either the size or the annual input/output of an LIS plant that could be placed in operation "with little risk of detection." How little is little? A low probability of detection per year may be appropriate and sufficient if the annual target quantity for monitoring clandestine production is also extremely low, representing a tiny fraction of existing stockpiles. For larger target quantities, representing as much as, for example, one per-

cent per year of the U.S. stockpiles of these materials, a higher probability of detection and identification for potential clandestine facilities is warranted, and in the view of the sponsors, obtainable.

Q2. Then why did the U.S. propose a fissile material cutoff twenty years ago?

A. There are two basic reasons that the U.S. once advocated such a cutoff. First, verification would have been simpler and more sure in the 1960's. Laser isotope separation (LIS), for example, was not yet developed. Even then, however, it was acknowledged that if LIS were to become feasible, it would make verification of a cutoff difficult if not impossible.

The second reason is that during the 1960s and early 70s the U.S. had a significant lead over the USSR in production of weapons-grade materials. Even though we were unable to convince the Soviets to negotiate a cutoff, the U.S. unilaterally ceased production of enriched uranium for weapons in 1964.

ACDA Question 2. Why did the U.S. propose a fissile material cutoff twenty years ago?

Response: ACDA's response to this question is incomplete and misleading. The statement that "verification would have been simpler and more sure in the 1960's" can not be supported. Coverage, response time, and ground resolution of U.S. surveillance satellites have improved considerably since the mid-1960's. Indeed, our knowledge of the USSR in virtually all areas is much greater than it was twenty years ago.

The U.S. proposal of the mid-1960's called for extensive application of "adversarial" anytime, anywhere inspection of suspect sites as a means of coping with the problem of clandestine production—hardly a "simple" matter, as the U.S. government rediscovered during the negotiations on the INF Treaty. The Gorbachev-era Soviet Union welcomes intrusive on-site inspections as an adjunct to national technical means of inspection, a position that was firmly rejected by the USSR during the 1960's.

The ACDA response omits the primary reason why the United States pursued a fissile cutoff in the period 1964–1968: it was offered as an inducement to non-nuclear weapon states to join the nonproliferation treaty. According to George Bunn, ACDA's General Counsel during the Kennedy and Johnson Administrations, "a major effort was made to find new ways to inhibit the spread of nuclear weapons. As a complement to his proposal for a nonproliferation agreement, President Johnson urged the Geneva disarmament conference to seek 'a verified agreement to halt all production of fissionable materials for weapons use.'"[1]

ACDA's contention that the alleged difficulties of verifying a laster isotope separation (LIS) plant were understood by official proponents of the cutoff way back in the 1960's is open to question on two grounds: first, the scientific feasibility for the LIS process was not even demonstrated until 1971 (at the AVCO corporation) and, second, it's production scale application for both commercial and military purposes is still under development today, almost 20 years later. Neither side has any operational experience monitoring such plants, but the United States routinely monitors the USSR's high power laser research programs and has identified the facilities where it believes this work is conducted. On-site inspections could obviously provide additional data.

It should be noted that while ACDA expresses repeated concern about the detectability of a hypothetical Soviet LIS plant—the USSR does not have a production scale LIS demonstration program, as does the United States—it fails to note that the U.S. Department of Energy has been the chief promoter of this new, supposedly evasion-prone technology.

Finally, under the proposed legislation, the President is provided with the option of certifying that the United States government is "unable to determine that . . . isotope separation plants dedicated to the production of plutonium for weapons purposes have ceased operation." Should ACDA's vague reservations subsequently prove to have an analytical and substantive foundation, the President is free to invoke this provision.

Q3. Isn't this just a partisan issue, with the Republicans trying to kill a Democratic initiative?

A. In fact, a fissile material cutoff was first proposed by President Eisenhower. The proposal was not pursued by the U.S. after 1973. When an attempt was made to resuscitate the proposal in 1978, President Carter ordered a thorough review of the cutoff. He concluded that his administration would not propose a cutoff, nor would it support a cutoff attempt proposed by others.

ACDA Question 3. Isn't this just a partisan issue, with the Republicans trying to kill a Democratic initiative?

Response. Well, let the reader be the judge. A letter dated May 1, 1989 from the ranking Republican members of the House Armed Services, Foreign Affairs, Intelligence, and Defense Appropriation committees, urged Republican members not to cosponsor "onerous arms control legislation" offered by Democrats, including an alleged measure "to curtail U.S. plutonium and tritium production." Fortunately, ten House Republicans have ignored this advice and become cosponsors of the bill. In reality, the International Plutonium Control Act does not "curtail" current U.S. plutonium production because there is no such production at the present time, and none is anticipated until 1996 at the earliest. And the bill does not affect, and indeed specifically excludes, present and future facilities dedicated to tritium production.

ACDA's reference to the handling of the fissile cutoff proposal in the Carter Administration is misleading. President Carter and some of his top arms control advisers favored a cutoff, but they faced the same kind of internal government opposition now being offered by ACDA and thus opted to defer the cutoff in order to gain a government wide consensus on SALT II. Nevertheless, the United States voted for a United Nations resolution offered by Canada favoring a cutoff in November 1980.

Q4. Does the USSR support the idea of a fissile materials production cutoff?

A. The USSR has indicated support for negotiations toward a cutoff. Some suspect that the USSR would prolong negotiations in hopes that the Congress would decline to fund the rebuilding of U.S. production facilities. Meanwhile, the Soviets would continue their own production unabated. Others say that the USSR could easily afford to cutoff fissile materials production for weapons because it would continue to have such capability in its civil nuclear sector. This would be to Soviet advantage because the U.S. would need to develop the technology and receive congressional approval for producing plutonium for military use in civilian nuclear power facilities.

ACDA Question 4. Does the USSR support the idea of a fissile materials production cutoff?

Response. On April 7, General Secretary Gorbachev announced during a visit to London that the USSR had ceased production of highly-enriched uranium for weapons and was in the process of shutting down three plutonium production reactors "without commissioning new units to replace them." Gorbachev stated that these steps were "yet another major step toward the complete cessation of production of fissionable materials for use in weapons."

According to Soviet Deputy Foreign Minister Victor Karpov, when Secretary of State Baker visited Moscow in May, he received a proposal from Gorbachev to begin negotiations on a fissile material production cutoff.

ACDA's answer to this question is filled with anonymous third-party testimony and tinged with a kind of free-floating paranoia (e.g., "some suspect that the USSR would prolong;" "others say that the USSR could easily afford"). Who are the anonymous authorities making these speculative assertions, and where is the evidence to support them? It is certainly not in ACDA's brief.

ACDA's brief insinuates that the USSR would prolong the negotiations undertaken pursuant to the International Plutonium Control Act with the intent of undermining the will of the Congress to build new production facilities. "Meanwhile," we are told, "the Soviets would continue their own production unabated." This is complete nonsense. ACDA clearly has not even read the bill, or does not understand what it has read. The whole thrust of the bill is to highlight a halt in current Soviet plutonium production operations as an essential precondition for entering into bilateral negotiations! In addition:

The bill would require a mutual and verified shutdown of all dedicated plutonium production reactors, chemical separation facilities, and isotope separation plants prior to the effective date of the funding restriction.

The legislation directly constrains only the operation of these facilities—not their design or construction, as ACDA wrongly implies.

The opportunity is specifically reserved for the President to certify that the potential uncertainty in verifying the shutdown of facilities dedicated to military production is unacceptable, thereby terminating the funding restriction.

The President is also allowed the opportunity to certify that the Soviet Union is refusing to negotiate in "good faith," likewise terminating the funding restriction.

With all these redundant protection measures built into the bill, one wonders if any measures could be devised that would calm ACDA's rampant fear of being snookered by smart Soviet negotiators.

ACDA's unsourced contention that "the USSR could easily afford to cut off missile materials production for weapons because it would continue to have such capability in its civil sector" is highly speculative and misleading. The comparison is made between actual production for weapons in the military sector—which ACDA says the USSR could easily give up—and a Soviet capability to assume this military role in the civil sector, which is supposedly unmatched by the United States.

[1] Bunn continues, "To that [Geneva] conference, from 1964 to 1968, the years we advocated and negotiated the NPT, we submitted working papers, technical briefings and many statements on how the production cutoff for nuclear explosives would be verified." Prepared Statement of George Bunn before the House Foreign Affairs Subcommittee on Arms Control, International Security, and Science, June 20, 1989.

The fact is that under a cutoff agreement, both the U.S. and the USSR could maintain an inherent capability for production in both dedicated military facilities and in the civil sector. An agreement to cutoff production of plutonium and highly-enriched uranium for weapons would not constrain the ability of either side to maintain reactor capacity dedicated to tritium production that could be quickly shifted to plutonium production.

Moreover, the Atomic Energy Act provides that "whenever the Congress declares that a state of war or national emergency exists," the President is authorized to operate civil nuclear facilities for military purposes.[2] We leave it to ACDA to explain why it considers the statutory requirement for such a Congressional declaration to be a "Soviet advantage." In this connection, it should be noted that the U.S. has a far larger installed base of civil nuclear power reactors than does the Soviet Union, with an inherently greater potential for weapons-grade plutonium production.

ACDA is simply wrong in stating that further technology development is required to produce plutonium in U.S. civil reactors. Plutonium is obviously produced in such reactors all the time. To produce weapons-grade plutonium, the irradiation time of the fuel in the reactor would be drastically reduced. Maintaining a contingency to reprocess this fuel would require construction of a new head-end facility at an existing reprocessing plant.

Q5. Does the USSR advocate ending the recycle of fissile materials from decommissioned weapons?

A. Yes, Soviet representatives have proposed this. If the USSR could successfully end recycling of materials from weapons and keep U.S. production facilities from being rebuilt, it would freeze an advantage in Soviet fissile materials stockpile, production capabilities, and weapons modernization.

ACDA Question 5: Does the USSR advocate ending the recycle of fissile materials from decommissioned weapons?

Response: If "Soviet representatives" have indeed proposed this, why not provide the reference and the context? In fact, this idea has been most vigorously promoted by independent U.S. scientists associated with the Federation of American Scientists. These experts have correctly noted that from the technical point of view, all the talk of "real reductions" in nuclear weapons will not amount to much if both sides are permitted to retain the nuclear warheads from dismantled systems and recycle the fissile material into new weapons. During the debate over the INF Treaty, the most prominent critic of allowing this recycling of warheads to continue was not the Soviet negotiating team but North Carolina Senator Jesse Helms!

Physicists Frank von Hippel of Princeton and Wolfgang Panofsky of Stanford have noted that if such genuine warhead reductions are desired in the future, a cutoff in fissile material production for weapons is an important prerequisite for high-confidence verification.

The rest of ACDA's response to this question is a melange of buzz-words and paranoia that is totally devoid of analytical content. No one—save for ACDA—has ever suggested allowing the USSR the authority to "keep U.S. production facilities from being rebuilt." And as for "freezing" an advantage in Soviet fissile materials stockpiles, ACDA's own prescription for avoiding controls in this area would allow the current Soviet "advantage" to increase by some tens of thousands of kilograms of plutonium.

Q6. Both the U.S. and the USSR have large quantities of fissile materials for weapons. Why do we need more?

A. In the short term, the U.S. needs more fissile materials for its modernization program. As with any weapon system upgrade program, the existing weapons must remain for national security interests until the new ones are available for use. If the U.S. were going to build a new fleet of tanks, it would not cannibalize old tanks for parts until they were no longer needed for security. The same principle applies to our nuclear weapons.

In the long term, the U.S. may or may not need more fissile materials. But, the U.S. should have the capability to make fissile material should it be needed. The U.S. should never get into a position whereby the USSR has the capability to produce plutonium and enriched uranium for weapons and the U.S. does not.

ACDA Question 6: Both the U.S. and the USSR have large quantities of fissile materials for weapons. Why do we need more?

Response: The short answer is, we don't. Both countries could cease production of fissile materials for weapons tomorrow and be guaranteed of huge, enduring stockpiles of nuclear explosive materials. ACDA's response is misleading, and blurs the distinction between future requirements for plutonium and highly-enriched uranium.

In the short-term, the U.S. does not require more plutonium for weapons production beyond that available from retirements and scrap recovery. The Department of Energy has testified that additional plutonium is not required for weapons in this decade, and that the output of the planned Special Isotope Separation Plant for plutonium would be used to fill a "plutonium reserve" requirement that has never been met over the entire course of the nuclear arms race. Why should "national security" suddenly require that we fill this reserve now, just as we are entering an era of nuclear reductions that will create a plutonium surplus.

Moreover, according to Evgeny Mikerin, the Soviet official in charge of nuclear materials production, the USSR is continuing to produce plutonium even while the total number of weapons declines because plutonium use per weapon is increasing in the newer more compact generation of Soviet weaponry. Why ACDA desires to facilitate the process of Soviet weapons modernization by allowing the Soviets unlimited quantities of plutonium is something of a mystery.

Likewise, the "need" for additional highly-enriched uranium (HEU) is premised on replenishing a reserve stockpile of HEU metal that has been drawn down by requirements for domestic and foreign research reactor fuel. The actual "need" for future use in weapons depends on several factors: the rate of retirement of older weapons, particularly obsolete W-33 artillery shells which contain large amounts of HEU; the implementation of START reductions; and the justification for "high-yield" options for certain weapons by replacing depleted uranium components with HEU. In the latter case, U.S. security hardly hinges on whether its strategic missile warheads have yields of 300, 450, or 600 kilotons. Those who continue to maintain that such differences matter are afflicted with the same nuclear warfighting fantasies that so alarmed the American and European publics during the early years of the Reagan administration. Congress and the country have moved beyond such mechanistic, dehumanized models of deterrence. Apparently, ACDA has not.

Finally, contrary to ACDA's implication, no one advocating a cutoff in military production has suggested that the U.S. should get itself into a position "whereby the USSR has the capability to produce plutonium and enriched uranium for weapons and the U.S. does not (emphasis added)." In fact, with respect to plutonium, that is already the case today, courtesy of the Reagan Administration's mismanaged nuclear weapons buildup of the 1980. An immediate plutonium production cutoff for weapons would prevent the Soviet Union from capitalizing on this asymmetry. In the case of uranium enrichment, U.S. capacity is almost double that of the USSR.

Q7. If there were a cutoff of fissile materials production today, wouldn't it benefit the US?

A. Absolutely not. A cutoff today would freeze a Soviet advantage, not only in the materials in stockpile, but in production capability. Let's take plutonium production for weapons as an example. U.S. facilities are old and have been shut down to correct environmental problems. Even after recently announced planned shutdowns, the Soviet Union will have at least ten operating nuclear materials production reactors capable of producing either plutonium or tritium. And, even if they were to close these, they would still have plutonium production facilities on-line as part of their breeder reactor program. Although these latter facilities are part of their civil nuclear program, they could be used for weapons purposes if the Soviets chose to do so. The U.S. has no breeder reactor program.

ACDA Question 7: If there were a cutoff of fissile materials production [for weapons] today, wouldn't it benefit the US?

Response: Ironically, ACDA's answer to this question raises most of the points that support the case for a production cutoff. Why does ACDA cite the large current Soviet advantage in plutonium production capability as an argument against negotiating a shutdown of Soviet military production reactors and reprocessing plants to continue in operation. Imagine if this same logic had been applied to the Soviet advantage in INF weapons in Europe or to their current advantage in armored ground forces. We would never have reached an INF Treaty or begun the Vienna negotiations on conventional force reductions.

As for the potential Soviet use of their civil nuclear facilities, ACDA knows quite well that as part of any fissile material production cutoff, these facilities could be made subject to IAEA or bilateral inspections that would assure their day-to-day use for civil purposes. Why the deliberate attempt to mislead?

Q8. Then the Soviet civil nuclear power industry could be used to produce nuclear weapons materials?

A. Absolutely. Unlike the US, the USSR has a breeder reactor program. The breeder reactor is designed to produce more plutonium than it uses. Furthermore, the program has an operational reprocessing facility to separate the plutonium. These facilities and materials could be redirected on short notice to weapons purposes. An equivalent capability would take years to develop in the US.

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[2] "Sec. 108. War or National Emergency.—Whenever the Congress declares that a state of war or national emergency exists, the [Atomic Energy] Commission is authorized to suspend any licenses granted under this Act if in its judgement such action is necessary to the common defense and security . . . [and] to order the recapture of any special nuclear material or to order the operation of any [licensed] facility" (42 U.S.C. sec 2138)

In addition to their breeder program, the USSR has at least sixteen RBMK-type power reactors. They differ from U.S. reactors in that they can be refueled on-line. This means that they can readily be used to produce weapon-usable plutonium. To use U.S. reactors in such a manner would require not only substantial time, technical effort, and money, but also a major policy change. Unlike the USSR, the U.S. separates its civil and weapons programs by law and policy.

ACDA Question 8: Then the Soviet civil nuclear power industry could be used to produce nuclear weapons materials?

Response: Yes, of course it could, but not while operating under international safeguards or bilateral inspections. And why focus just on the "breakout" potential of the Soviet civil nuclear industry. The U.S. civil nuclear power industry has an even larger plutonium production potential.

ACDA's one-sided focus on the Soviet breeder program is likewise misleading. The United States has an extensive research and development base in breeder reactor technology, including two operating fast reactors—the Experimental Breeder Reactor II, and the Fast Flux Test Facility—and a Zero Power Plutonium Reactor. The plutonium associated with these reactors amounts to seven metric tons.

The fact is, however, that in the event of the unlikely breakout scenario feared by ACDA, the Soviet breeder reactors would not offer any special advantages in producing weapon-grade plutonium over restart of existing Soviet production reactors. The depleted uranium "blankets" of the three Soviet breeders could be used to produce an estimated 0.5 to 1.0 metric tons of weapon-grade plutonium per year. By comparison, one U.S. production reactor produces about 0.5 metric tons per year.

The USSR has three operating breeders—the BOR–60, the BN–350, and the BN–600. Only the BOR–60 runs on plutonium fuel. A small number of experimental mixed plutonium/uranium fuel elements have been used in the BN–350, but the BN–600 uses medium-enriched uranium fuel and is constrained by safety concerns to operation at half power.[3] Plans to build several BN–800 breeders are at a standstill, because these reactors are forecast to produce electricity that is at least 2.5 times more expensive than that generated by conventional Soviet power reactors.

ACDA also fails to mention—or perhaps is unaware—that plutonium contained in the highly irradiated fuel elements used in the core of a breeder is much more difficult to separate than the plutonium contained in the blanket. The USSR has an experimental facility at Dimitrovgrad for reprocessing fuel from the small BOR–60 breeder reactor, and to date has not conducted large scale reprocessing of breeder plutonium fuel elements.

ACDA's observations on the RBMK reactors are completely in error. The fact that these reactors are refueled "on line" does not mean that "they can readily be used to produce weapon-usable plutonium." The RBMK was designed to produce electricity: production of weapon-grade plutonium in low-burnup fuel would severely affect its economics and operational performance. In normal operation the reactor operates at ten times the fuel burnup required to produce weapon-grade plutonium. Even with high burnup fuel, the RBMK refueling machine is running close to its capacity of 6 fuel elements per day. Production of weapon-grade plutonium would require the fuel to be moved in and out of the reactor significantly faster than the maximum rate attained by the current refueling machines.

The RBMK reactors therefore could not be operated continuously to produce weapon-grade plutonium without major changes, including installation of much faster or additional refueling machines. Even if these modifications proved feasible, which is by no means certain, such rapid refueling would create additional operational and safety problems that would seriously interfere with the intended function of electricity generation. It must be noted that this requirement for modification removes any special advantages accruing to the Soviet Union from the RBMK's on-line refueling capability.

Even more disturbing is that while ACDA officials have been apprised of the above analysis, they continue without a shred of contrary evidence to cite the RMBK as conferring unique advantages over U.S. batch-refueled civilian power reactors for weapon-grade plutonium production.

It should be noted that even the USSR's dedicated graphite moderated plutonium production reactors—the design antecedents of the RBMK—are also batch-refueled, requiring frequent shutdowns to withdraw the irradiated fuel elements.[4]

Q9. Why do we not worry about Japanese or German breeder reactor programs then?

A. Japan and the Federal Republic of Germany are neither adversaries of the U.S. nor nuclear weapons states; the USSR is both. Additionally, Japan and the FRG have signed the Nuclear Nonproliferation Treaty and have given credible assurances including coverage with fullscope safeguards that their nuclear programs are for civil purposes only. Obviously, we do not need to worry as much about them as we do the threat from a nation that has thousands of warheads targeted against the US.

ACDA Question 9: Why do we not worry about Japanese or German breeder reactor programs then?

Response: On the contrary, the rest of the U.S. government (if not the current ACDA) has worried a great deal about Japanese and German civil plutonium programs, and how these programs might be safeguarded to assure that their is no misuse or proliferation of the materials and technology involved in these programs. In its response, ACDA inverts the usual nonproliferation standard, which holds that diversions of small quantities of fissile materials are much more significant in non-weapons states than in a nuclear weapons state such as the USSR, precisely because the USSR does indeed already have "thousands of nuclear warheads targeted against the US." Diversions of small quantities of fissile materials from the civil to the military sector in the U.S. or the Soviet Union would have absolutely no bearing on the military-strategic relationship between the two countries.

Q10. Isn't the Soviet breeder program too small to worry about?

A. The USSR has one of the largest breeder reactor programs in the world. Right now it has two operating reactors and more planned. Together, the three can produce plutonium equivalent to the capacity of one dedicated plutonium production reactor. And, as part of the breeder program, the Soviets have a reprocessing facility which could be directed to weapons purposes.

ACDA Question 10: Isn't the Soviet breeder program too small to worry about?

Response: The real issue is not the size of the Soviet breeder program, but whether it is possible to implement international safeguards or bilateral inspections that provide adequate assurance that the nuclear materials and facilities involved in this program are not being used for military purposes. As noted above, this should be easier to accomplish in the USSR than in non-weapons states, simply because the threshold for monitoring militarily significant quantities of material is much higher than in non-weapons states. For example, 400 kilograms of plutonium (enough for the cores of about 100 modern nuclear weapons) revealed to be missing from a civil stockpile is 50 times the current international monitoring standard of 8 kilograms, but still less than 0.05 of current U.S. and Soviet stockpiles of plutonium.

The Soviet breeder program is far smaller than originally planned, and like breeder programs worldwide, has turned out to be uneconomical. Thus the prospects for its future growth are hazy, at best. The best insurance against the future military application of the Soviet breeder program lies in obtaining a binding international agreement enforcing a clear separation between Soviet civil and weapons programs, i.e. a cutoff of fissile material production for weapons purposes.

Unfortunately, ACDA appears far more interested in using the Soviet breeder program as an excuse for continued U.S. fissile materials production for weapons than it does in assuring the civil applications of this program in the future.

Q11. Wouldn't on-site verification assure that the Soviets would not use their breeder program for weapons purposes?

A. Because of the number of Soviet facilities included, inspection and verification of all plutonium production facilities would be a difficult and expensive project. That said, a real concern is not just how they use the output of their reactors day to day, but also in a "breakout" scenario the USSR has plutonium production facilities in its civilian sector; the U.S. does not. The Soviets have a plutonium stockpile for their civil reactors; the U.S. does not. What if the USSR decides to break any agreement we might reach on a cutoff, sends inspectors home, and dedicates the facilities and stockpile to weapons purposes? It would take years for the U.S. to match either the Soviet production capability or stockpile.

ACDA Question 11. Wouldn't on-site verification assure that the Soviet would not use their breeder program for weapons purposes?

Response: The ACDA brief fails to answer directly its own question. In fact, the number of facilities associated with the Soviet civil plutonium program is not large: 3 operating breeders, one of which is a small research reactor; an experimental breeder fuel reprocessing plant; a small plutonium fuel-fabrication plant; and a conventional reactor fuel reprocessing plant with an estimated average annual capacity of 250 metric tons of power reactor fuel per year.[5]

Although ACDA implicitly concedes that safeguards on these facilities would be effec-

[3] Interview with Soviet breeder reactor safety expert Dr. Boris Litvinev of the Kurchatov Institute, Moscow, July 5, 1989.

[4] Information supplied to Congressional delegation during visit to Chelyabinsk 40 plutonium production site, July 7–8, 1989.

[5] Calculated based on information supplied by Evgeny Mikerin, chief of manufacture and technology for the Ministry of Atomic Energy and Industry, that the Soviet civil reprocessing plant at Chelyabinsk-40 in the Urals has separated "about 20 metric tons" of plutonium since its startup in 1978.

tive against day-to-day diversions of significant quantities of material, it once again reverts to the spectre of a unilateral Soviet "breakout" capability. Far from enhancing Soviet breakout potential, a fissile material cutoff inspection regime would provide the United States with additional warning time when and if the Soviet Union expelled inspectors at the civil facilities in order to turn them to weapons purposes.

The ACDA estimate that it would take the U.S. "years" to match the Soviet civil plutonium production capability or stockpile in the event of a breakout is completely undocumented, but, more importantly, it is strategically irrelevant. In fact ACDA undermines its emphasis on the importance of the asymmetry in civil plutonium capabilities by noting, in response to question 13, that the United States does not need to match Soviet military plutonium production capability. However, since this is supposedly what the debate is all about, why then is it suddenly important to match Soviet civil plutonium capability. In reality, as long as the United States can field a survivable nuclear deterrent, it hardly matters from a military perspective how much plutonium the Soviets have accumulated in their civil and military programs.

In the unlikely event of Soviet breakout, perhaps the least effective measure to hedge against such an eventuality would be the revival of the failed U.S. commercial breeder reactor program.

Excess plutonium stockpiles are useless without excess on-line capacity to produce additional warheads and delivery systems. Is ACDA suggesting that the United States also needs to maintain access surge capacity in our nuclear warhead, missile, and bomber production plants to respond to the imagined Soviet "breakout?"

The 18 months to two years that would be needed to restart plutonium production correspond to the minimum time needed to produce a significant quantity of additional delivery vehicles, and thus a Soviet advantage in materials alone would be inconsequential.

The major task in the event of a Soviet plutonium "breakout" would be the implementation of measures to assure the future survivability of U.S. nuclear deterrent forces in the face of a larger threat. Such measures as redeploying the SBM force on a larger number of smaller submarines, deploying additional counter-ASW devices, dispersing and raising the alert status of the bomber/cruise missile force, further improvements in warning and communications, and redeploying MIRVed missile warheads on additional single-warhead mobile ICBMs would all constitute more meaningful responses than cranking out more plutonium. Presumably, U.S. nuclear forces already are designed in such a way as to be reasonably resilient to such "excursions" in the threat, making ACDA's preoccupation with Soviet plutonium "breakout" an even more arcane exercise than it seems at first glance.

One byproduct of the START agreement will be an increase in U.S. reserves of weapon-grade plutonium available for responding to a Soviet breakout.

Q12. Are there really savings to be gained under the proposed legislation?

A. If we fail to maintain the capability to respond to a Soviet threat and allow our production capacity to wither away, there could be some savings. If, however, we maintain the necessary capability to produce for national security requirements—including new and/or refurbished facilities, there would be no significant savings. In any event, the verification provisions to inspect existing Soviet and U.S. facilities are estimated to be at least $100 million per year.

Question 12. Are there really savings to be gained under the proposed legislation?

Response: Under the cutoff, savings from discontinued operations for weapons purposes at enrichment plants, military production reactors, conversion facilities, fuel fabrication plants, reprocessing plants, and high level waste treatment facilities would amount to at least $5 billion over the next twenty years. A cutoff could have the indirect political effect of diminishing, but by no means eliminating, planned capital expenditures worth at least $6 billion on new plant and equipment to hedge against a breakdown of the agreement. The scale of capital investment achievable under a cutoff would not be dictated by the terms of the agreement. The United States would be free to invest as much or a little as the political process decided is justified to deter and protect against ACDA's cherished breakout scenario. Given that maintaining a capability for rapid production of vast quantities of weapons plutonium is not the most rational response to large numbers of additional Soviet warheads, one may be justified in supposing that there would be additional capital savings under a cutoff as well.

As for the costs of verification, one may note that even when relying on ACDA's inflated cost estimate, the savings from reduced operating expenses over the next twenty years would pay for the U.S. share of the verification costs for at least 100 years.

Q13. Does this mean that the U.S. must match the Soviet capability, i.e., 10–12 production reactors?

A. No. Due to the U.S. technology lead, we do not need vast quantities of new material. We must, however, have the capability to respond to the identified national security needs and to preserve flexibility to respond to changing world conditions in the future. While our need is much smaller, there still exists a requirement for some production capacity.

Question 13: Does this mean that the U.S. must match the Soviet capability, i.e., 10–12 production reactors?

Response: In answer to this question, ACDA suddenly reverses itself and suggests that the disparity between U.S. and Soviet production capabilities is unimportant. ACDA then proceeds to state a proposition that is entirely consistent with negotiation of a fissile material production cutoff for weapons, namely, that the United States should maintain "some production capacity" to "preserve flexibility to respond to changing world conditions in the future." This would certainly be the case under the agreement outlined in the International Plutonium Control Act.

[From Newsweek, Oct. 28, 1991]

UPPING THE NUCLEAR ANTE

Now that Mikhail Gorbachev has matched George Bush's offer of deep tactical nuclear weapons cuts, NEWSWEEK has learned that Bush is preparing another dramatic proposal to reduce the nuclear arsenals. In the coming weeks, senior administration officials say, the president will call for a permanent ban on the manufacture of nuclear fissionable material, namely highly enriched uranium and plutonium used in the production of atomic weapons. Top White House aides are also debating recommendations for new limitations on nuclear testing, the sources say.

Bush's proposals would save the United States billions of dollars by allowing the closing of several aging and unsafe nuclear plants, already facing a massive and costly cleanup. It would help Gorbachev by enabling Moscow to shut down a number of even more unsafe weapons-oriented nuclear plants. No date has been set for the announcement, but administration officials expect Bush will offer the proposals before he meets Gorbachev in Madrid on Oct. 29, a day before the opening of the Mideast peace conference.

[From the Washington Post, Oct. 25, 1991]

SOVIET PROPOSALS DIVIDE BUSH'S AIDES—CHENEY AND SCOWCROFT REPORTED AT ODDS ON RESPONSE TO ARMS OFFERS

(By R. Jeffrey Smith)

A rift has developed between Defense Secretary Richard B. Cheney and White House national security adviser Brent Scowcroft over how receptive the United States should be to several arms proposals made on Oct. 5 by Soviet President Mikhail Gorbachev, U.S. officials said yesterday.

In recent days the two officials have indicated that they differ over how far and how quickly the administration should move toward embracing new arms limitations beyond the broad unilateral measures announced by President Bush on Sept. 27, the officials said.

The dispute became evident late last week when Cheney blocked release of a draft White House announcement that would have accepted a Soviet proposal to declare an end to production of fissile material for nuclear weapons, the officials said.

The two policymakers also differ on whether to pursue Gorbachev's request for joint limitations on underground nuclear tests and for a U.S. declaration that nuclear arms will be used only in retaliation for nuclear attack. Scowcroft is willing to negotiate on both, while Cheney and other senior administration officials say the United States cannot compromise on either issue.

The rift in the administration comes as U.S. and Soviet leaders have ordered unprecedented arms limitations to mark the close of the Cold War and reduce the risk of future conflict. Gorbachev's proposals, to which Bush has not yet responded, were a response to Bush's initiative that lowered the readiness of some strategic weapons and eliminated or withdrew U.S. tactical nuclear weapons around the world.

U.S. officials said they expect Gorbachev to press Bush on the arms proposals during their meeting in Madrid on Tuesday, shortly before the two men open a landmark Middle East peace conference. But no administration meetings are scheduled to develop a U.S. consensus beforehand, the officials said.

"There will be no new U.S. [arms control] proposal at the summit," a senior defense official predicted yesterday.

The fissile materials that would be affected by the Soviet plan are plutonium and highly enriched uranium, long-lived radioactive elements that sustain the chain reaction of a nuclear weapon's explosion. Neither materials has been produced for years by the United States, which routinely harvests the materials from retired warheads for reuse in newer weapons.

By contrast, the Soviet Union is believed by independent U.S. experts to be continuing production of fissile material for its nuclear weapons. Production of tritium, a vital gas used to boost a weapon's explosive force, would not be affected by the Soviet plan.

In working to block the White House announcement, Cheney, who at the time was traveling on official business in Italy, com-

plained that he had not been fully consulted about it—an assertion that Scowcroft is said to consider unwarranted. Cheney is said to believe that a pledge not to resume production of fissile materials requires further study and could unduly constrain U.S. options for developing new nuclear weapons.

Scowcroft maintains that mutual U.S. and Soviet declarations to cease production would have no adverse impact on U.S. security and would only reflect what budgetary and political pressures in both countries are requiring anyway, officials said.

A senior Department of Energy official, speaking on condition that he not be named, said his department supported this view. "From the DOE perspective, we're not going to be in the plutonium business at all," the official said, citing an abundance of stockpiled plutonium already available and plans to recover additional plutonium from weapons slated for elimination under the Bush initiatives.

"We also don't need any more high-enriched uranium," either for nuclear weapons or to fuel nuclear reactors that drive naval ships and submarines, the official added. The Energy Department is responsible for manufacturing nuclear weapons and fissile materials to meet Defense Department requirements.

U.S. arms negotiators had pursued an international shutdown of fissile material production plants from 1957 to 1970. At one point, a U.S. official went so far as to assert that "a disarmament program aimed at eliminating the threat of nuclear war would be incomprehensible if . . . states were permitted to continue an unrestrained race by enlarging their stocks" of such materials.

The Soviet Union long spurned the idea because it had smaller stocks of such materials and wanted to catch up, but eventually embraced it as a goal for arms negotiations in 1982. By then, the Reagan administration was in the midst of expanding the U.S. arsenal of nuclear weapons and rejected such constraints.

Environmental and safety hazards forced the Energy Department to halt plutonium production at Savannah River, S.C., in 1988. One year later, a warming of U.S-Soviet relations contributed to the department's cancellation of plans to build a costly new plutonium production plant.

Scowcroft has been instrumental in getting Bush to make several arms control proposals over Cheney's initial objections, including a bid in 1990 to ban mobile, land-based missiles with multiple warheads. Scowcroft also pressed for the elimination of tactical nuclear weapons aboard naval vessels long before it was accepted in September by Cheney and Bush, officials said.

CASTING A NEW LIGHT ON OLD ENVIRONMENTAL PROBLEMS

Mr. WIRTH. Mr. President, I want to take a few minutes this morning to talk about some startling new information about the degree to which humankind is assaulting the globe's most important environmental systems, and about the implications of these new findings for the way in which we view and respond to these trends.

Two days ago, the premier body of international scientists empanelled through the Montreal Protocol on Ozone Depleting Substances, released their most recent findings related to the health of the Earth's protective ozone layer. The news is not good.

The ozone layer, of course, protects plants and animals—all living things—from the sun's harmful ultraviolet radiation. This veil, 5 to 15 miles above the Earth, is absolutely essential to long-term human health, and to the health of other animals and plants which we depend on for our survival. Everyone is familiar with its practical function—in guarding us against the effects of ultraviolet radiation: skin cancer, cataracts, and other health and biological threats.

We have known for some time that the ozone layer was indeed being destroyed. The dramatic ozone hole discovered in the mid-1980's confirmed scientists worst fears about ozone depletion. The erosion of this solar shield has been steady and increasingly rapid in the 1980's.

Now, however, the world's best scientists report that the ozone layer is in far greater trouble than was ever imagined. The problem is getting dramatically worse and we are going to have to take immediate steps to prevent more catastrophic harm to this critical atmospheric system.

Briefly, the scientific assessment yielded these results:

First, the scientists found even clearer evidence that manmade substances—such as the chlorofluorocarbons and halons—are causing the ozone layer to erode.

It was confirmed once again that ozone levels are decreasing everywhere but the low-altitude regions; that is, ozone is being lost over the mid- and high-latitude areas of the Northern Hemisphere, which is of particular relevance to all of our constituents.

Third, scientists have now measured the lowest ozone level ever over the Antarctic. And in a dramatic departure from previous years—when the ozone hole was a biennial occurrence—the ozone hole has been detected in each of the last 3 years. It is getting bigger and bigger and it is becoming more frequent.

Fourth, downward ozone trends are occurring in the fall, spring, and summer. This is most troubling, Mr. President, because during the summer months in the Northern Hemisphere, the maximum dose of ultraviolet radiation reaches our citizens as the sun enters and passes through the solstice.

Fifth, the report found a 3-percent overall loss of ozone in the Northern Hemisphere. Furthermore, it is now clear that we cannot do anything to prevent a doubling of depletion levels to between 6–8 percent.

Finally, the scientists confirmed what policymakers have suspected—we were exceedingly lucky and wise to have developed the Montreal Protocol, and to have strengthened domestic implementation through the Clean Air Act. If we had not taken those steps, the ozone layer would be in even greater peril. Nonetheless, let us not sit back on the heels of these actions. We must approach these new findings with the utmost and gravest sense of urgency.

We are fortunate in this institution to have such leaders as Senator CHAFEE and Senator GORE, consistently putting forward sound policy proposals to address these alarming trends. And we need to look to them again, to the resolution offered by Senator GORE earlier this year, which he has been recirculating since Tuesday, for further guidance.

Mr. President, we should take up and pass right now Senator GORE's resolution. I firmly believe that this is one of the most important things that we could possibly do in this institution for the remainder of the year. The implications of these recent findings are that shocking. Ozone depletion is no longer solely a threat to future generations—we can no longer assume that our children and grandchildren can cope with and answer these challenges.

It is our problem. It is here today. This is the new reality under which we now live.

We have altered the delicate balance that has governed the history of our planet over the milennia: Human beings, not Mother Nature, now control the fate of the global environment. And we are powerful agents of destruction. The responsibility conferred on us as a result of this new reality must guide our actions for the remainder of this and the future Congresses in this century.

I should add that this scientific panel has also concluded that the effect of ozone depletion and chlorofluorocarbon emissions is one of cooling the planet—an opposite and omninous view of all previous thought and a thorough repudiation of the administration's so-called action program for combating the more challenging issue of global warming.

In light of these new findings, in the face of the new relationship we have with the Earth, it is time to reexamine the way we approach these issues.

No longer can we afford to spend months arguing over whether or not to respond to the trends. We have no choice but to respond.

No longer can we assume that we have the luxury of time to delay our response. The situation is urgent.

And no longer can we argue about whether or not the United States should play a leadership role in addressing these trends. Without concerted leadership from this Nation, the responses we so urgently need will be delayed.

Other nations around the globe are already responding. They are developing strategies that will lead to major agreements next June at the United Nations Conference on Environment

and Development in Brazil. There are those who continue to fight these efforts, but they are going to happen, and we must be engaged. We cannot duck this. The White House cannot duck this.

Therefore, Mr. President, let me suggest that we in this country cast new light on these old environmental problems. Instead of looking at the economic hurdles that we must jump in order to protect the global environment, the Congress and the administration should join together and look for the economic openings that we can seize as the nations of the world band together to protect our planet. Rather than looking for obstacles, let us look for opportunities.

For example, let me contrast the response of this administration and the Government of Japan. Where some in this administration are looking for ways to prevent international agreements, the Japanese are looking for ways to take advantage of international agreements. Those agreements are going to come. Why do we not look progressively at this rather than looking at these as threats and rather than setting up barriers?

Last year, Japan established the Research Institute of Innovative Technology for the Earth [RITE] to develop new, more environmentally sound technology. The Japanese have issued "New Earth 21," an incredible vision for the future and an action program for developing energy technology for the 21st century. The Japanese are not backing away from global environmental challenges, they are taking advantage of them. And recognizing their superior position to develop these technologies, they are pushing for meaningful environmental agreements.

As an example of what is so clearly happening, one only has to think about the announcements in recent days and weeks from the Japanese auto industry. Last month, Honda introduced its new lean-burn engine technology that will increase the efficiency of the Honda Civic by 20 percent. And in recent days, there have been a slew of announcements of new 100-mile-per-gallon automobiles that meet all American safety standards.

These trends are summed up in the philosophy of Honda's chairman: "We must focus our attention to reduce emissions and improve fuel economy while providing performance characteristics that improve the overall driving experience." Would it not be nice if our automobile leadership was as progressive as that?

The Japanese clearly recognize the scientific and public consensus that has emerged so rapidly around the world and they are poised to take advantage of that consensus. It is time for this great Nation to rise to the challenge, to roll up our sleeves and apply our legacy of innovation and hard work to address and capitalize on these new realities.

It is my belief that such an effort could serve as a cornerstone of an American economic revival—a new thrust toward environmentally based economic growth and away from the economic lifts provided by the military buildups of the past. The cold war is over; a new war is emerging, the war against a warmer world and climate change. We are entering a new era, when the very life support systems of the planet are at stake. The 21st will be the century of the environment.

Let me touch on some of the economic opportunities we have in this new era.

In the area of trade, where we are currently running a $100 billion deficit, there is an enormous untapped potential to supply clean energy for the rest of the world. So we can shift our own energy approach, use more of our basic material—natural gas, for example—back out oil, and help our economy here at home, and put a major effort into developing alternative technology which the rest of the world is going to need as well.

Today, the developing nations account for 16 percent of global energy use. In the next 30 years, they will approach 50 percent of all energy consumption. That growth in the energy sector can not and will not be based on the energy technologies we have relied on. The environment could not survive that kind of assault.

Several years ago, an industry group was convened by the Agency for International Development to look at energy opportunities in the developing world. In the next 15 years, as much as 1 trillion dollars' worth of energy technology will be needed and purchased in the developing nations. Who is going to provide that technology, Mr. President? Let me suggest that we have both the capability and the creativity to seize that opportunity. We are the world's leader in developing renewable energy technology—but the Germans and the Japanese have been marketing it, reducing our share of the global marketplace to 30 percent in 1988, where we controlled 75 percent a decade earlier. We should win that market back—that is an enormous opportunity.

Similarly, we should be rapidly expanding our technology research efforts to develop the environmentally sound products that will be needed in the future. Related to the troubling ozone findings, researchers at the National Renewable Energy Lab, formerly SERI, while woefully underfunded, have developed a new insulation technology—compact vacuum insulation—that could eliminate the need for chemical cooling in refrigerators, which is now supplied by CFC's, precisely the kind of technological innovation which we ought to be considering here. We ought to take advantage of this changing environment world.

Mr. Sununu and company should stop looking at this as a huge liability for the United States, and do simply what the Japanese are doing. Change is coming. The world environment is changing. Let us change as well.

With $1 million, the researchers at the National Renewable Energy Lab have developed a technology which has enormous promise for industrial and product applications. Without retooling the refrigerator industry, we can replace foam insulation, improve interior space and save energy. And I hope my colleagues from steel States are listening—estimates are that initial deployment of this technology could require 600 million pounds of steel per year. Therefore, we get double economic benefits—the benefits of energy efficiency and reduced costs of environmental damages, and growth and opportunity in the steel industry.

Third, there are job development strategies closely linked to environmental protection. A recent analysis estimates that 60 to 80 jobs could be created for every $1 million we invested in weathering homes across the Nation—a potential pool of 6 to 7 million job years.

Why do we not do that? Why do we not build up pipelines to carry our own natural gas up to New England rather than importing oil from overseas? There is example after example where an enlightened policy, a progressive policy can be very good for the job market in the United States and can increase our own energy independence, and yet we are not doing it.

We continue to hear from the administration that they want to go down this tired old path of dependence on oil. That does not make sense, Mr. President. That is such a myopic, such a shortsighted point of view.

Similarly, generating electricity with solar energy employs double the amount of people as does a traditional fossil or nuclear energy plant. And those are jobs that make our economy more efficient and our trade picture more bright.

These are, Mr. President, only a few examples of what can be done if we look at these issues from a different angle. We need not retreat from the enormous and urgent environmental challenges we face. Indeed, we should engage them immediately, optimistically, and fully. I believe there is a kind of economic Darwinism at play here—those corporations and those nations that can become most efficient and can adapt to the new economic and environmental realities of our times will be the fittest companies and countries in the future.

Again, I want to call my colleagues' attention to the troubling new evidence about grave environmental threats to our future. Just as impor-

tantly as those threats, as that evidence is clearer and clearer, so are the opportunities that we have in responding to those threats.

We ought to be using our own energy resources. We ought to be developing our job market here at home. We ought to be reversing some of the insane economic policies that we are pursuing now, such as exporting whole logs to Japan. The Japanese mill them over there. They process them over there and send them back to us.

This kind of colonial mentality and approach has to stop. There are so many opportunities here, Mr. President. And I think that the recent evidence on the hole in the ozone ought to give us another wake-up call. We can change. We must change. The world is changing. The climate is changing. Let us hope the United States changes as well.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. MITCHELL. Mr. President, as promised earlier, I have now reviewed the schedule for the next several days with the distinguished Republican leader and other interested Senators and now announce that there will be no rollcall votes today. The next rollcall vote will be on Monday evening, not prior to 6 p.m.

What I propose the Senate do is the following: That the amendment relating to the Griggs standard in law that was the subject of the compromise reached last evening be laid down and debated today and that if a vote on that amendment is necessary it be scheduled for Monday evening; that the subject matter of the application of the laws, this and other laws, to the Senate be debated on Monday as well as any other amendments and that we attempt to complete action on the bill by Monday evening.

I have asked the distinguished Republican leader to provide us with a list of any potential Republican amendments and to have those Senators present on Monday during the day to offer their amendments and to debate them and then proceed as promptly as possible to dispose of those on Monday evening.

Now that the logjam has been broken on this bill, it having been the subject of our attention for nearly a year and a half, I hope that we can bring it to a swift and fair conclusion. And it is at least my goal to try to achieve that by Monday night.

So that Senators can prepare their schedules, they should be aware, therefore, that there will be no votes today, there will be no votes during the day on Monday, but there will be debate and amendments offered and there is the potential of several votes on Monday evening. There will certainly be at least one vote. Senators should be aware there will be at least one vote, and, if we can move it that far, a vote on final passage of this bill on Monday night.

Mr. President, I thank my colleagues for their cooperation. I thank my colleague from Hawaii for permitting me to make this announcement. And I will, Mr. President, on Monday or Tuesday, have a further announcement with respect to the schedule following disposition of this bill.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii, Mr. AKAKA, is permitted to speak for up to 10 minutes.

ELECTRIC VEHICLE R&D

Mr. AKAKA. Mr. President, I rise to alert my colleagues to an event that has not received the proper attention it deserves.

Today we will achieve an important milestone in the development of electric vehicles. The Secretary of Energy will join representatives from General Motors, Ford, and Chrysler, to sign a $260 million, 4-year agreement to develop a new generation of batteries that can power the electric vehicles of tomorrow.

This unprecedented collaboration between the Federal Government and the big three automakers has been launched in order to rapidly advance the commercialization of electric vehicles. As evidence of their commitment to this technology, the automakers will match the Federal contribution to this research initiative on a dollar-for-dollar basis.

Known as the U.S. Advanced Battery Consortium, this alliance between the big three automakers and the Department of Energy will develop advanced batteries that can significantly enhance the range and performance of electric vehicles. A range of up to 150 miles on a single charge, with response and acceleration characteristics similar to today's gas-powered cars, is the established objective. These new batteries will also meet stringent environmental, safety, and health requirements.

Battery development, as well as the means of charging and servicing batteries, is the single greatest obstacle to commercialization of electric vehicles. Just as the development of the internal combustion engine yielded a century of gasoline-powered transportation, there is every expectation that breakthroughs in battery technology will produce a second generation of emission-free electric transportation.

Few people realize it, but electric cars were the vehicle of choice in the year 1890—the year 1890. A century ago, less than a quarter of the "horseless carriages" were propelled by internal combustion engines. Among those who preferred the electric car to their noisy and smelly gasoline-powered competitors was Henry Ford's wife, Clara.

Mr. President, we will soon have the opportunity to stimulate a resurgence of electric vehicles. The Senate is about to consider legislation that will greatly accelerate the pace of electric vehicle research, development and demonstration. I am referring to title IV of S. 1220, the National Energy Security Act of 1991.

During markup on the Energy Security Act, I was pleased to join with Senator WALLOP, the ranking member of our Energy Committee, in offering a package of electric vehicle amendments that appear in title IV of the bill. The agreement signed at the White House today is precisely the kind of collaboration anticipated by the bill we will soon consider.

Title IV of S. 1220 authorizes the Secretary of Energy to enter into cooperative agreements for research and development on electric vehicles. The Secretary is also authorized to conduct up to ten field demonstrations of electric and electric-hybrid vehicles. The criteria set out in S. 1220 assures that only manufacturers capable of advancing to large-scale commercial production can participate in the program.

In addition, title IV provides authority to enter into five cooperative agreements to develop the infrastructure necessary to support the commercialization of electric and electric-hybrid vehicles. Finally, it amends the acquisition requirements for Federal fleets to include electric and electric-hybrid vehicles.

Electric vehicles offer the potential for significant energy security benefits by utilizing sources of energy that are in abundant supply, rather than relying on dwindling and often expensive sources of imported oil. The potential for oil savings is dramatic. If we succeed in replacing only 1 percent of this country's conventionally fueled vehicles with comparable electric vehicles, we could achieve a savings of 60,000 barrels of oil per day.

In addition to their energy security benefits, electric vehicles are one of the most effective means of reducing transportation-related atmospheric pollution. Ninety-six cities and urban areas in the United States have air pollution levels that exceed national standards for ozone. A significant amount of the precursors of ozone come from gasoline-powered vehicles. When compared to gasoline vehicles, electric vehicles can reduce pollutants by as much as 97 percent.

Last year, California became the first State to mandate the production and sale of so-called zero-emission vehicles, by requiring 2 percent—or almost 40,000—of the new vehicles sold in the State to meet the mandate. Currently, only electric vehicles satisfy these re-

quirements. We need to carry out an electric vehicle demonstration in the mid-1990's before vehicle manufacturers are required by California, and perhaps other States, to manufacture zero-emission vehicles.

Mr. President, the electric vehicle legislation contained in S. 1220 will assist manufacturers and consumers alike in developing a high quality, reliable product that can, and I believe will, achieve widespread commercial success.

Mr. President, I yield the floor at this time.

Mr. LIEBERMAN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut [Mr. LIEBERMAN].

PRIVILEGE OF THE FLOOR

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that Elaine Francis, who is a congressional fellow in my office this year, be allowed privilege of the floor for the remainder of this day.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair.

(The remarks of Mr. LIEBERMAN pertaining to the introduction of S. 1875 and S. 1876 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LIEBERMAN. I thank the Chair. I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I ask unanimous consent to speak for such time as I may use in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

DANFORTH-KENNEDY SUBSTITUTE CIVIL RIGHTS ACT OF 1991

Mr. KENNEDY. Mr. President, this Nation's long struggle to overcome the historical legacy of discrimination has been characterized by difficult battles and by periodic, historic advances. Today, the U.S. Senate has the opportunity to take one of those great steps forward and to advance significantly the cause of equal opportunity for all Americans.

During the past 24 hours, Members of this body have joined with administration representatives to craft a civil rights bill that will restore to all Americans the ability to enforce their right to equal job opportunity. In a series of recent decisions, the Supreme Court cut back on the ability of employees successfully to challenge business practices which deny them the right to compete on a level playing field. Congress has worked for 2 years to reverse those decisions and remedy their destructive effect.

The struggle has often been difficult, but the day has finally come when we can all join together to enact a fair civil rights bill, which restores our law and once again protects our citizens from the debilitating effects of employment discrimination.

Like other civil rights efforts before it, the effort to pass this Civil Rights Act has not been a Democratic effort or a Republican effort; it has been a national effort. Only through bipartisan cooperation has the United States been able to enact the landmark civil rights laws that have given practical meaning to the fundamental principles of fairness, justice, and equality of opportunity.

In past Congresses, Republican and Democratic leaders have put partisanship aside and worked together to achieve these goals and expand opportunity for all our citizens. The Civil Rights Restoration Act, the Fair Housing Amendments Act, the Americans With Disabilities Act—these and many other achievements became law only because of the dedicated efforts of Members of both parties.

The Civil Rights Act of 1991 is the next great step in that tradition. Senator DANFORTH has worked tirelessly to develop a compromise which fairly restores the guarantee of equal job opportunity for women and minorities. Under his leadership, Republicans and Democrats have prepared a consensus bill that can and should become the law of the land. Everyone committed to the Constitution's great promise of equal justice for all owes Senator DANFORTH a tremendous debt of gratitude.

The agreement with the administration represents a significant victory for civil rights. It will allow us to lay to rest the divisive quota charge and focus on positive efforts to heal the wounds caused by discrimination.

The bill overrules the Supreme Court's decision in Wards Cove Packing Co. versus Atonio, restoring the right of employees to challenge practices which disproportionately exclude women or minorities from America's workplaces. One of the Civil Rights Act's fundamental purposes was to overrule Wards Cove and restore the law to its status under Griggs versus Duke Power. The agreement accomplishes that goal.

It also confirms statutory authority for adjudication of disparate impact suits under title VII and codifies processes for litigating such suits, ensuring that victims of discrimination will not again have their right to challenge practices with a disparate impact eroded by the Supreme Court.

Congress has understandably experienced considerable difficulty in its efforts to encapsulate the law under Griggs as it existed prior to the Wards Cove decision. Congressional consideration of a wide variety of possible statutory language reflected, not a disagreement over what the standard should be, but the inherent difficulty in finding language which would best accomplish the goal, sought by Congress from the outset of this lengthy legislative process, of codifying pre-Wards Cove legal principles.

The Danforth-Kennedy substitute makes clear that the Civil Rights Act of 1991 restores Griggs by stating in its purposes section that it is intended to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in Griggs, and in other Supreme Court decisions prior to Wards Cove. It does not alter pre-Wards Cove law to favor either plaintiffs or defendants, but restores the status quo in Griggs that was disrupted by Ward Cove itself.

The amendment codifies the procedures for litigating disparate impact cases. The complaining party must demonstrate that a particular employment practice—or, under certain circumstances, a decisionmaking process—causes a disparate impact on the basis of race, color, religion, sex, or national origin. When such a showing is made, the burden then falls to the respondent to demonstrate that the challenged practice or process is job related for the position in question and consistent with business necessity. The substitute makes clear that the respondent bears the burden of proving business necessity, and that the terms "job related" and "business necessity" have the meaning enunciated by the Supreme Court in Griggs and in other Supreme Court decisions prior to Wards Cove.

Even if the respondent proves business necessity, the challenged practice or process is unlawful if the complaining party demonstrates that a different employment practice with less disparate impact exists, and the respondent fails to adopt the alternative employment practice. The bill restores the law regarding the demonstration of alternative business practices to its status before June 4, 1989.

Once the employer fails to adopt such an alternative practice, the employer cannot escape liability under this "third-prong" by adopting the practice at a later time, such as during the trial of the disparate impact claim.

In requiring that a complaining party demonstrate that a respondent uses an employment practice that

"causes" a disparate impact, the substitute does not require a complaining party to prove that antecedent or underlying causes did not contribute to the disparate impact. Instead, the complaining party must show that the application of the practice or process in question gave rise to a disparate impact. For example, as the Supreme Court discussed in McDonnell Douglas Corp. versus Green, if a complaining party demonstrates that the application of a written examination results in a disparate impact on blacks, the plaintiff is not required to demonstrate that differences in educational backgrounds or cultural differences did not causes the difference in performance between black and white test takers.

The Danforth-Kennedy substitute permits a plaintiff to challenge a decisionmaking process when the elements of a respondent's decisionmaking process are not capable of separation for analysis. This provision is intended to be used when an employer or other covered entity uses several employment practices—such as tests, interviews, and educational requirements—in reaching a decision.

To demonstrate that the elements of a decisionmaking process are not capable of separation for analysis, the complaining party must show that he or she cannot identify which particular practice or practices used to make the decision actually caused the disparate impact. This showing can be made under three circumstances.

First, one may challenge a decisionmaking process where the process constitutes a "black box mush": Where the employer subjectively combines together several practices in reaching the decision in a manner that makes determination of the impact of specific practices impossible.

So, for example, if an employer relies on a test, an interview, and an applicant's grade point average in making an employment decision, but subjectively reviews these three factors without assigning any particular weight to any of the factors, courts should allow a plaintiff to challenge these three factors as a single practice, and should allow the employer to defend it as such.

Second, one may challenge a decisionmaking process when there is no information reasonably available to the complaining party—through discovery or otherwise—after diligent effort, from which the complaining party can identify the particular practice or practices that actually caused the disparate impact. So, for example, if a defendant has destroyed or failed to keep records showing which practices it relied upon, and the plaintiff, after diligent effort, is unable to locate other evidence permitting the separation of the decisionmaking process into its component parts, the court should permit the plaintiff to challenge the decisionmaking process as a single practice, and should allow the employer to defend it as such.

Finally, a plaintiff may challenge a decisionmaking process as a single employment practice when such a process includes particular, functionally integrated practices which are components of the same criterion, standard, method of administration, or test, such as the height and weight requirements designed to measure strength in Dothard versus Rawlinson.

The determination whether a device such as a test is one employment practice or several turns on how the test is used in the particular circumstances. If a test has several components, and performance on a particular component is used as the basis for employment decisions, then that component of the test may constitute an employment practice. Alternatively, if all the elements of a multicomponent test are weighed together in making an employment decision, then the entire test is one employment practice.

In addition to overruling Wards Cove and restoring Griggs, the Danforth-Kennedy substitute closes one of the most serious loopholes in existing law. Currently, only victims of intentional job discrimination because of race or ethnicity can obtain compensatory and punitive damages. That remedy is not available to victims of intentional discrimination based on sex, religion, or disability.

Section 5 of the substitute creates a right of action under a new section 1977A of the Revised Statutes for compensatory and punitive damages for victims of intentional discrimination in violation of title VII or the Americans With Disabilities Act of 1990 [ADA]. It permits victims to recover compensatory damages in actions not only against private employers, but also in actions against State and local governments or the Federal Government.

The bill does not give victims an unlimited entitlement to damages. Compensatory and punitive damages are available only in cases of intentional discrimination. Punitive damages are available only where the defendant acted with "malice or with reckless indifference to" the victim's federally protected rights. The amount of most compensatory and all punitive damages that each individual complaining party can obtain is limited to $50,000 in the case of a respondent with 100 or fewer employees; $100,000 in the case of a respondent with more than 100 and fewer than 201 employees; $200,000 in the case of a respondent with more than 200 and fewer than 501 employees; and $300,000 in the case of a respondent with more than $500 employees.

Compensatory damages do not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964, including front pay. The caps do not apply to past pecuniary losses, such as medical bills.

In cases involving discrimination against the disabled, businesses which make a good faith effort to reasonably accommodate a person with a disability are protected from damage awards, even if a court later rules that they failed to provide reasonable accommodation.

In order to assure that a complaining party does not obtain duplicate damage awards against a single respondent under title VII and section 1981, the provision limits title VII damages awards to a complaining party who "cannot recover under section 1977 of the Revised Statutes (42 U.S.C.)." So long as a complaining party, for whatever reason, cannot recover under section 1981 against the title VII defendant, a title VII damage action against that defendant would be permitted. A title VII damage action would thus be allowed, for example, where section 1981 suits are unavailable as a matter of law, where the relevant section 1981 statute of limitations has run, or where a title VII plaintiff files with the court a binding stipulation waiving any section 1981 claim against the title VII defendant for the act of alleged discrimination at issue.

The complaining party need not prove that he or she does not have a cause of action under section 1981 in order to recover damages in the title VII action.

Section 1977A(b)(4) makes clear that nothing in section 1977A should be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes, 42 U.S.C. section 1981. The new damages provision thus does not limit either the amount of damages available in section 1981 actions, or the circumstances under which a person may bring suit under section 1981. For example, the bill does not affect the holding of the Supreme Court in Saint Francis College that section 1981 was intended to protect from discrimination "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." Indeed, that discrimination is national origin discrimination prohibited by title VII, as well.

Although a great deal of attention has been focused on the Wards Cove and damages provisions, the Danforth-Kennedy substitute addresses many other issues as well.

It will reverse the Supreme Court's decision in Patterson versus McLean Credit Union, and restore the right of Black Americans to be free from racial discrimination in the performance—as well as the making—of job contracts. In other words, employers who subject black workers to race discrimination on the job, instead of just in hiring, will be targeted by the law.

The substitute will reverse the Supreme Court's decison in Martin versus Wilks, and place much-needed limits on repeated litigation over previous consent judgments that settled claims of job discrimination.

Contrary to the claims of the bill's critics, the substitute will not deny injured parties their day in court. It protects a previously entered consent judgment only in cases where the person challenging the judgment had actual notice and an opportunity to make objections, or where the person's interests were adequately represented by a previous challenger who raised the same legal issues in a similar factual situation, and there has been no intervening change in law or fact. The provision explicitly states that it may not be construed to authorize or permit the denial of any person's due process rights. It has been amended over the past year to make absolutely certain that it will not interfere with fundamental fairness in any way.

The Danforth-Kennedy will also overrule the Supreme Court's decision in the Aramco case, and extend the protections of title VII and the Americans with Disabilities Act to American citizens working overseas for American employers. The Supreme Court decided Aramco after Congress considered the 1990 Civil Rights Act, and this provision therefore was not contained in last year's bill. However, it parallels a 1984 amendment to the Age Discrimination in Employment Act, which was enacted to achieve a similar protection for elderly workers, and which received strong congressional support.

Next, the substitute reverses the Supreme Court's decision in Lorrance versus AT&T Technologies, and gives workers a fairer opportunity to challenge intentionally discriminatory seniority systems. Like the administration's 1990 proposal, the bill makes clear that an individual may challenge an intentionally discriminatory seniority system when it is first applied to injure them, and that such plans will not be protected from judicial review merely because they were not challenged at the time of their adoption.

The bill also overrules the Supreme Court's decision in Price Waterhouse versus Hopkins. It prohibits so-called mixed motive discrimination, by making it unlawful for an employer to rely on a discriminatory factor in making a job decision—even if other factors involving no discrimination also justified the employer's decision.

In addition, the substitute ensures that successful title VII and section 1981 plaintiffs are able to recover their expert witness costs. In a wide range of cases, the ability to recover these costs is essential to guarantee that equal job opportunity is a reality in practice, not just an empty phrase in the United States Code.

I wish we had been able to restore those additional expert fees to voting rights cases. The administration refused to provide those. I think that is unfortunate. But we were able to get the restoration of expert fees for the provisions related to section 1981.

In another important provision, the bill confirms that title VII protections extend to employees of the House of Representatives and the Senate, while ensuring that these bodies can define appropriate rules for dealing with discrimination claims.

That issue will be addressed as I understand by the leadership. It will be presented in a generic form to apply as I understand it to a number of different questions that the institution has to address.

That will be done on Monday as I understand it.

Finally, the substitute prohibits employers from adjusting or altering an employment-related test score on the basis of race, color, religion, sex, or national origin. The actual scores of test takers should be accurately recorded and honestly reported to those who are to use them. The substitute also provides that a test cutoff score, the minimum passing score necessary to be eligible to be considered for selection or referral, should not vary with the race, color, religion, sex, or national origin.

This provision does not purport to affect how an employer or other respondent uses accurately reported test scores, or to require that those scores be used at all. Employers and others retain their discretion to decide what weight if any to give to test results. As Justice Powell observed in Connecticut versus Teal, "few if any tests" "accurately reflect the skills of every candidate." An employee may conclude in a particular case, that other factors, such as experience or recommendations, are a better indication of an applicant's actual ability. An employer may find that a particular test is unfair, that a test is a more reliable predictor of ability for certain individuals or groups than for others, or that errors in a test's reliability tend to favor some and disadvantage others.

The substitute provides that nothing in the amendments made by the bill should be construed to affect court-ordered remedies, affirmative action, or conciliation agreements that are otherwise in accordance with the law. Thus, the bill is intended not to change the law regarding what constitutes lawful affirmative action and what constitutes impermissible reverse discrimination.

The Danforth-Kennedy substitute addresses many of the Supreme Court's decisions which limited the ability of American workers to challenge discrimination in our Nation's workplaces. It provides damages to victims who have thus far been denied a fair remedy in intentional discrimination cases.

For 200 years, civil rights has been the unfinished business of America—and it still is—perhaps now as much as ever. We have suffered too many needless and self-inflicted wounds in recent months. The Civil Rights Act of 1991 is a significant step forward in the Nation's continued effort to provide every citizen—blacks and whites, women and men, religious minorities, and the disabled—with equal job opportunity and equal justice under law.

Together, the Congress and the administration can make that great principle a reality. Because of this agreement, we are closer to that goal. I urge my colleagues to join the effort by voting "yes" on the Civil Rights Act of 1991.

I thank the Chair.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee [Mr. GORE].

WAR IN THE REPUBLIC OF CROATIA

Mr. GORE. Mr. President, I rise to speak on a different subject. I want to speak again on the subject of the war of aggression that is being conducted on the territory of the Republic of Croatia against its people by the former Yugoslav Federal Army, acting as an agent of the unregenerated Communist government of the Republic of Serbia.

Dozens of trust agreements have been worked out and signed, and yet this tragic war goes on. Between 2,000 and 3,000 people are reported to have been killed, thousands more to have been wounded, and several hundreds of thousands to have been displaced, many of them across the Hungarian border.

News comes these last few days of the naval blockade and land encirclement of the city of Dubrovnik. Dubrovnik is not the only Croatian city to be attacked, but it is a treasure of the world at large, a manifestation of something manmade that lifts rather than casts down the human spirit.

The threat to its existence is a symbol of the threat that this war represents to chances for the peaceful evolution of Central and Eastern Europe now that the end of the cold war allows its people to resume their quests for national identity after a period of almost 50 years of Communist suppression.

We know this body must not allow the rush of other events to blind us to the fact that the Balkans are once again becoming a tinderbox of history. We are in danger of allowing the future to be wrested from our grasp in a fit of absentmindedness. America lacks an effective policy and must quickly acquire one. The Bush administration appears to hope somehow that this continues to be a Yugoslav entity that can be redeemed and restored and which will serve American interests.

The administration continues to place its trust in the European Com-

munity as having the capacity, without strong American participation, to handle this conflict.

Both assumptions are wrong. Both assumptions are prolonging this war, and serving to mortgage our basic interests in the future to the hatreds and fears that are becoming stronger in the Balkans with each passing day.

The polity we have known as Yugoslavia no longer has legitimate existence either in fact or in theory, and the sooner we move to dispel the illusion of its existence, the sooner we will see an end to this bloody war. It is altogether appropriate that our country, which played such an important part in creating Yugoslavia at the end of World War I, now take the lead in discarding that failed experiment. There is no will to union within that former country. What there is, is a will to domination on the part of the leadership of the Republic of Serbia, which has unsurped power, and which now uses the armed forces that once existed to protect Yugoslavia from outside domination, for the purpose of imposing Communist domination on peoples who have demanded freedom. Yugoslavia was created in response to the Wilsonian principle of self-determination. It was valued by us as a barrier to Soviet aggression. It no longer reflects the concept of self-determination, but rather the reappearance of imperialism in all its arrogance. It no longer serves any geostrategic purpose for us. On the contrary, it is now the breeding ground for troubles that will plague the United States of America for another generation, unless we take measures now to deal with the situation.

Therefore, Mr. President, let us have done with the fiction that Yugoslavia exists. Let us see what is really happening there. A Communist ruler is attempting to impose himself and his Communist designs on people who seek freedom, self-determination, and independence. Let us put an end to this stupid and demeaning process of drawing lines in the sand, only to have Serbian forces, hours later, cross them with total impunity. Let us especially put to an end the ridiculous and dangerous hoax that this is a civil war, merely an internal matter. Let us recognize the independence of Croatia, and at a stroke establish that what is taking place is not a domestic matter but an international act of aggression, which is violating the central principle upon which the peace of the Eurasian continent is based: the principle that international borders may not be changed by use of force. Let us, by this action, make it clear to the leaders of the Serbian government that they stand fully exposed to international action against the threat to international order that they now represent. Then, Mr. President, let us take some prudent actions of our own and block the assets of the former Yugoslav state. Let us then cut off the commerce of the Republic of Serbia with the United States, in any of its forms. Let us recognize and establish relations with the Republic of Slovenia and the Republic of Croatia. Let us provide Croatia, along with our European allies, with emergency medical and humanitarian assistance. Let us put on the table a direct threat to supply them with antiaircraft and antiarmor equipment if cease-fire agreements now in place are not honored by Serbian authorities. Let us strongly urge our friends in the European Communities to join us in this cooperative set of steps. Let us say: There is a Europe; that it has to have its own collective security policy. This is the first test of Europe's ability to demonstrate the will and even the kind of junkyard dog maintenance that it takes to deal with a situation like this. One must ask them whether or not Europe really wants to manifestly fail in the first truly important test of these propositions. By all means, let Europe stay in the lead, but for Heaven's sake, cannot our Government at least suggest to them that it is now time, for the sake of Europe, to say to the Serbian leadership, who represent virtually everything Europe no longer wishes to be about: pay heed or else.

Mr. President, we are not going to like what will happen in the Balkans if we simply stand by, if Europe simply stands by and if the Republic of Serbia has its way. It will be a cauldron of hatred. It will become a pit of regional rivalry among regional powers. It will light the way, by the fires it sets, to violent conflict among other Slavic nations driven by ethnic tensions. It will sit in the gut of Europe like a gallstone. It will threaten the long-term vital interests of the United States of America. Members of my family, in the generation which preceded me, were called to arms to leave farms in Tennessee and go to Europe, because war erupted in the Balkans. Now, in the aftermath of this long 50 year struggle, we look to the horizon and see the potential for peace and prosperity and cooperation, and yet, once again, in the Balkans, a Communist dictator seeks to impose his will on peoples who desire freedom, and the civilized world stands by and does nothing, except pursue the fiction of drawing these lines in the sand and then saying: My, my, they have crossed another line. People are dying, cities are being destroyed, families are being torn apart right in Europe, and nothing is being done. If we allow it to persist, we should not be surprised if, years from now, the tensions which are being laid down there boil over once again in a fashion which calls upon the people of Tennessee, Connecticut, Idaho, other States in this Union, to join in an effort to reestablish peace. The old cliche, "an ounce of prevention is worth a pound of cure," has never been more apt than right now, as the world community watches this tragedy unfold and pretends that it is no concern of ours.

We have a responsibility to pay attention to what is going on, and to recognize that Europe, concerned and consumed as it is with the process of its own economic and political integration, evidently lacks the political will and the determination and gumption necessary to establish some modicum of order in the Balkans and prevent this tragedy.

The United States of America is the only nation in the world capable of providing leadership in the world. It is understandable that, with all of the events in the world going on, our resources of attention are strained to the limit, but we cannot afford to ignore this tragedy, not after one so like it caused the deaths of so many of our own citizens, just a generation ago. We should wake up to the full implications and end our present policy, which is based on fiction and illusion, which is based on a false sense of distance and insulation from what is taking place in the Balkans. The restoration of the Yugoslav State is not possible. Yugoslavia is gone, finished, a fiction. Let us no longer base our policy on the illusion that it is still there waiting to be restored. It is gone.

On the contrary, what is needed is for us to get rid of its rubble as soon as possible and begin to participate in the construction of something better.

Let me conclude, Mr. President, by expressing my belief and hope that we are ready to speak out in this body in favor of the necessary changes in American policy. I will circulate a sense-of-the-Senate resolution outlining what that policy should be for the consideration of all Members, and I will seek to offer that resolution at the earliest possible moment next week.

I will be persistent on this matter. I feel an obligation to speak out, and I believe this body has an obligation to speak out.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho [Mr. CRAIG].

CIVIL RIGHTS

Mr. CRAIG. Mr. President, I appreciate an opportunity to speak on another issue, but an issue that is very much linked to the legislation that this body now has before it. That, of course, is the issue of civil rights and, hopefully, the compromise that our colleague from Massachusetts just spoke to that is now being covered in the wire stories of this country, that appears to have resulted through the evening and the night last night.

What I am talking about is an amendment that I hope I am going to have the opportunity to vote on—and I

hope my colleagues will—to the civil rights compromise, better known as the Grassley amendment, one that will force this body, the Senate of the United States, to comply with all of the laws that are embodied in the civil rights law, and others that we have chosen over time to set ourselves apart from as it relates to normal courses of business.

This body has been largely torn apart by the Clarence Thomas-Anita Hill issue of the last several weeks. During that period of time, I analyzed the procedures with which I hire and handle the employees of my office and discovered that I did not have a sexual harassment policy that was clear and defined, as I think I should have for the sake of my employees, and I am now changing that. I hope other Senators will also do the same, those who have not addressed it.

But what I found out clearly is pointed out by the Grassley amendment: that we do treat ourselves separate and apart from the rest of the world; that we do treat ourselves, as our President spoke of most clearly yesterday, as a privileged class that works apart from the rest of the country and expects to be allowed to do so. He spoke of us as being arrogant, and I think our expressions and our failure to act demonstrate there is an element of arrogance here. I think we saw that yesterday on the floor when this body passed a resolution that could only have been called a muddying-of-the-waters resolution, as it came to clearly defining and allowing the American people to see if this body was going to investigate the leaks that resulted around the Clarence Thomas-Anita Hill issue.

We failed, on a party-line vote, to go at a 30-day FBI investigation, apart from all other issues, to examine how and if the leak occurred, and why it occurred.

Why did we do that? Well, probably because we were afraid that some of the culprits involved might have been one of us. So we chose to extend it, to spread it out, Mr. President, to a 4-month delaying approach that involved an issue that has already been thoroughly examined, the Keating issue.

I hope the American people, in watching all of this, registered it but one way, that we are continuing to set ourselves apart from the average American, saying that we are unique and special. We are unique as a body, but we are not special in the sense that we should treat ourselves any differently than we would expect the American people to be treated as individuals by their employers or as free agents in a society.

So I hope this body will gain the gumption to stand up and vote for the Grassley amendment. That is a step in the right direction down a long road of opening our windows, pulling back the shades, and letting the light of day shine through. No more smoke-filled rooms, Mr. President; no more clouds to cover what is really at issue here.

When I served in the other body, as we affectionately call it, the U.S. House of Representatives, I consistently voted to bring that body into compliance with all of the laws and the rules and the regulations that we pass out to the private sector and expect them to live within. Now, what is good for the goose must assuredly be good for the gander, and I hope that, through civil rights, through sexual harassment, through the kinds of legislation in the amendment proposed by our colleague from Iowa, we will step forward and say no more hiding behind the doors that shutter this body. I hope that is the case.

And let me say to our President, I say, "George Bush, bravo; right on. Focus on us; we deserve to be focused on to correct the errors of our ways."

I yield back the remainder of my time, and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BRYAN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 1:45 P.M.

Mr. CONRAD. On behalf of the majority leader, I ask that the Senate stand in recess until 1:45 p.m. today.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Thereupon, at 12:39 p.m., the Senate recessed until 1:45 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. AKAKA].

The PRESIDING OFFICER. In my capacity as a Senator from Hawaii, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from Hawaii, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Without objection, the Senate will stand in recess, subject to the call of the Chair.

Thereupon, the Senate at, 1:58 p.m., recessed subject to the call of the Chair; whereupon, the Senate, at 2:25 p.m., reassembled when called to order by the Presiding Officer [Mr. WELLSTONE].

The PRESIDING OFFICER. The Senator from Utah is recognized.

CIVIL RIGHTS ACT

Mr. HATCH. Mr. President, I am pleased to cosponsor the compromise measure with regard to civil rights. I commend Senators DANFORTH and DOLE, the President, John Sununu, Boyden Gray and his staff for their tireless efforts. It is never easy or fun to oppose a civil rights bill let alone lead the opposition as I have done for nearly 2 years with respect to the earlier version of this bill. I would like to think that as a result of the debate over this bill, a better bill has emerged, and there is no doubt in my mind that the final bill that we are agreeing to is head and shoulders above any bill that has been submitted thus far.

We have seen numerous versions of this bill come and go. In fact, the business necessity part of this bill has been changed so many times that we have lost track of it. Keep in mind, the definitions of business necessity that we have considered seem to be never-ending. It has taken a great deal of effort to find our way back to Griggs versus Duke Power, that particular standard on business necessity, and I believe we have finally done so.

We have never been there before. Both sides agreed to this last evening. Everyone has swallowed hard to accept this measure. The President has made major concessions on the damages issue. His bill, S. 611, which was a very fair bill and went a long way to resolve the problems that existed over the last 2 years, provided up to $150,000 in damages for harassment. This compromise provides capped compensatory and punitive damages for intentional discrimination in hiring, promotion and discharge under the terms of this bill, as well as harassment. And keep in mind, that is only for intentional discrimination.

This compromise does overturn Wards Cove on the burden of persuasion issue, as the President's bill does. The President had given on that issue a long time ago. This itself, as I have just mentioned, was a major concession by the President. At the same time, the President's position in requiring the plaintiff to identify the particular business practice causing the disparity in a disparate impact case has been preserved. And the President has won that issue. That is very, very important.

Moreover, the terms "business necessity" and "job related" reflect the concepts enunciated in the Supreme Court's decisions in *Griggs* v. *Duke Power Co.* at 401 U.S. 424, a 1971 case and other Supreme Court disparate impact decisions prior to the Wards Cove versus Atonio case. That is a major, major concession to the President that had to be or this bill would have been vetoed. We had 35 votes to sustain that veto. That is even considering one vote that we felt we had lost. And we had a chance of having 36 votes. All we needed were 34.

Problematic language in the bill's section overturning Wards Cove, language which would have led employers quietly to adopt quotas, and which I have addressed in letters to my colleagues this summer, has been removed. That was a major concession. They may seem like a few words to some, but to those who know what is involved in employment discrimination cases under title VII, these word changes are monumental and I have been fighting for them for over 2 years.

I want to compliment my colleagues for being willing to get together on both sides of this floor and finally resolve it in a way that really makes sense and in a way that gets the administration behind this bill. This is important stuff. This is not some insignificant little set of changes. By standing his ground on these two key issues, the President has shielded the American people from the clear inducement to quotas contained in earlier versions of this legislation.

I think he deserves the thanks of the American people for having done so, and he deserves the cosponsorship, or at least the vote of all of us on this floor to support this particular bill.

Another compromise in the bill concerns Martin versus Wilks. This case involves the right of innocent persons to a day in court to challenge the implementation of consent decrees or litigated judgments when such implementation deprives them of equal protection of the law or their statutory civil rights. I feel very strongly about this issue. But in the interest of compromise, I will forgo offering my amendment which would restore a right to a day in court and keep the Martin versus Wilks case alive.

Now, this morning, the majority leader suggested—I have to believe facetiously—that President Bush has finally agreed to do what he refused to do 18 months or 6 months ago on civil rights. In fact, the President has been willing from the beginning to adhere to the Griggs versus Duke Power Co. standard from day one.

My friends on the other side of the aisle have never been willing until this morning to accept language that does so. It is the President who has resisted crafty and dangerous proposals that promised equal results for groups rather than equal opportunity for individuals.

That is what is really involved here, and these seemingly small number of word changes are absolutely monumental changes in discrimination law. Anybody who does not understand that, who represents otherwise, clearly does not understand civil rights law, clearly does not understand employment discrimination cases, clearly does not understand what is being done here.

The President, the Attorney General, the Chief of Staff, and the counsel to the President, Boyden Gray, have worked tirelessly to achieve a compromise.

We could have gotten this done a year ago if this bill had not been so extreme to begin with, if all the numerous prolawyer provisions had not been tucked into the fine print and if the other side of the aisle did not believe it had a political issue in forcing the President to veto a bill which had been misnamed a civil rights bill up to that point. It took a veto to get people to be serious around here. I believe it was only after it was known that we had the votes to sustain a veto this next week during the debate on this bill and thereafter that we were really able to get down to business and seriously consider these problems.

Again, I want to pay special tribute to Senator DANFORTH and Senator DOLE and Senator KENNEDY, Senator BUMPERS and others who have played significant roles, in being willing to not split the difference but to really resolve the differences over these very important principles of law, because without that we would not have resolved this problem. And it still is not resolved in the sense that we still have to come to the floor—and I hope nobody is going to break this agreement now that we have entered into it.

Mr. President, I have to tell you it is not easy for a President to veto any bill, let alone a civil rights bill, and especially this President who feels so deeply committed to civil rights. But this President has had the guts to stand up for these principles that now will be codified into this civil rights bill, and it literally can be called a civil rights and not a quota bill under the circumstances. He has fought for what I consider to be some of the most important principles underlying our civility in this country today and underlying our ability to compete with free-market economies all over the world.

If we did not have this type of compromise and this type of resolution and these types of word changes, I have to tell you this bill would have been just as hard fought as it has been over the last 2 years. It would have been vetoed, and I assure you we would have sustained the veto. I think that is what really helped bring it about after 2 years and one veto which was sustained. I think everybody realized it was time to sit down and finally resolve the problem in word changes that had to happen. And it took a gutsy, sincere, honest, and decent President standing for principle who was willing to veto even what was called a civil rights bill but really was a quota bill in order to get this accomplished.

I have to tell you I think the world of President Bush, but my esteem for him has never been higher than it is as I stand here on this floor today, because I tried last year to resolve this particular issue, and I have to tell you I failed and the President was right. I have to say that this year I think all of us will be winners in the sense of doing something that really is right for the country, because if and when we pass this bill—and I should think we would be able to pass it within a few days this next week—we will effectively overrule the Patterson versus McLean case, something President Bush has been willing to overrule from day 1. In so doing, we will outlaw racial discrimination in the terms and conditions of contracts. That will help employees all over this country, an important change that has been held in abeyance as we fought out these battles over quotas and preferences the last couple of years.

I am glad we can put politics aside. I hope we will. I am glad that the President stood his ground until he got these kinds of significant word changes that help all of us to be able to stand up and say this is not a quota bill and that this bill is a further protection to small and large business people, all of whom have been afraid that if this bill passes—the former bill—this litigation bonanza for lawyers, they would spend most of their time in court losing what little profits they make and in the end going out of business. That is why this is so important.

So I am pleased to back this compromise. A lot of us have worked hard to help to bring it about. But again I want particularly to commend Senators DANFORTH, DOLE, KENNEDY, BUMPERS, and others for the work they have done on this bill. I do not want to leave anybody out, nor do I want to leave the staffs out that have worked tirelessly over the last number of years to try to help resolve these problems.

I would like to get on with the bill and not worry too much about who has won or lost there. But I have to tell you there have been significant changes that make a difference, that make sense, and that should cause all of us in this body to support this bill, which will really do an awful lot of good for everybody in our society and particularly, for the first time, for women in sexual harassment cases.

I will have a lot more to say about this on Monday as we debate this matter further. I will explain these provisions and explain the word changes and why they are so significant. I will discuss why they are changes we could never have achieved in the past had it not been for a strong President who was willing to stand up and take the political flak for vetoing what was called a civil rights bill but really was a quota bill and who was willing to work on some of the provisions and to compromise on provisions that did not involve quota aspects of this bill.

So, Mr. President, I thank the Chair for this time, and with that I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

THE CIVIL RIGHTS ACT OF 1991

Mr. GORTON. Mr. President, as members of this body, and most particularly my distinguished colleague from Utah, are well aware, I opposed the predecessor to this bill a year ago and helped to uphold the President's veto of that proposal.

Mr. President, I have also been consistently in opposition to H.R. 1, and for that matter, even to the Danforth proposal, which has been discussed informally in this body over the course of the last several weeks. I am delighted to say that when Senators KENNEDY and DANFORTH introduce their substitute bill in the form of an amendment in a relatively short period of time I will be a cosponsor of that amendment.

I believe that the bill as will be amended, makes significant steps forward with respect to sexual discrimination and sexual harassment. I also believe, as does the President and my distinguished colleague from Utah, that it is no longer a quota bill because it has abandoned at long last the intent to redefine the definition of business necessity, as that definition has been elaborated by the Supreme Court over the course of more than the past 20 years.

Far from attempting a statutory definition of the term business necessity, we have now left that definition in the hands of the courts, where it belongs. That is a profound, significant change, and the change is sufficient to cause this Senator to change his position from implacable opposition to enthusiastic support.

Mr. President, over the past two years, the debate over civil rights legislation has been couched in highly technical and legalistic terms such as "disparate impact," "unintentional discrimination," "business necessity," "burden of proof," "burden of production," "burden of persuasion," and other phrases which mean little except to judges, constitutional scholars, and, of course, trial lawyers. This body, in all of its scholarly debate, seemed to have lost sight of the fundamental goal of the Civil Rights Act of 1964; namely, that all individuals should be employed and promoted on the basis of merit rather than on false standards such as skin color or race. What is sought by the 1964 Civil Rights Act is equality of opportunity, not proportionality of results.

Although the activist courts of the 1970's and early 1980's read much into the 1964 Civil Rights Act which was not there, it is our responsibility as Senators to look back to the laudable goals of the original law as written and to proceed from that point.

The Civil Rights Act of 1964 is a straightforward statute with a very clear message. The law simply provides that:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The late Senator from Minnesota, Hubert Humphrey, the "father" of the 1964 Civil Rights Act, went to great lengths to emphasize that factors such as gender and national origin may not be used to make employment decisions except in very limited circumstances, and that race and color never may be used. Senator Humphrey twice entered into the CONGRESSIONAL RECORD a concise explanation of the 1964 Act which stated:

> [Title VII] does not provide that any preferential treatment in employment shall be given to Negroes or to any other persons or groups. It does not provide that any quota systems may be established to maintain racial balance in employment. In fact, the title prohibits preferential treatment for any particular group. Any person, whether or not a member of a minority group, is permitted to file a complaint of discriminatory employment practices.* * * Employers continue to be free to establish their own job qualifications provided they do not discriminate because of race, color, religion, sex, or national origin. The title does not prohibit an employer from hiring persons of a particular religion, sex, or national origin where religion, sex, or national origin is a bona fide occupational qualification—CONGRESSIONAL RECORD, May 25, 1964, p. S11848; July 2, 1964, p. S15866.

I note with great interest that race and color specifically were excluded from the list of characteristics which an employer may consider to be a bona fide occupational qualification. That is entirely consistent with Senator Humphrey's particular emphasis throughout the 1964 debate on achieving a colorblind society.

Mr. President, in the last 2 years, the bulk of the debate over civil rights has centered on situations in which discrimination is not overt or even intentional. Rather, it dealt with situations in which the makeup of an employer's workforce for a given job description is significantly different from the relevant labor pool at large. In these so-called "unintentional discrimination" or "disparate impact" cases, culpability may be imputed against the employer and proven by indirect means. Employers may be found liable even in the absence of any impermissible intent.

The 1964 Civil Rights Act does not deal expressly with "unintentional discrimination" or with "disparate impact." Those are concepts which have been developed by the courts as they have decided specific cases based on specific fact situations.

In the case of *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 91 S.Ct. 849, 1971, the Supreme Court first dealt with those concepts in an organized fashion. In *Griggs*, the Duke Power Co. required job applicants and employees to have completed high school or to have passed a general aptitude test to be eligible to be hired by, or transferred to more desirable departments within the company. Prior to passage of the Civil Rights Act of 1964, the Duke Power Co. had a history of overt employment discrimination. On behalf of the Court, Chief Justice Warren Burger wrote:

> The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited. * * * On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a *demonstrable relationship to successful performance of the job for which it was used.* * * * But Congress directed the thrust of the [Civil Rights Act] to the consequences of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a *manifest relationship to the employment in question.*—401 U.S. at 432, 433, 91 S.Ct. at 853, 854 (emphases added).

That decision dates from 1971, 20 years ago.

Notably, Griggs dealt with one specific employment practice as it affected one specific employer. In the view of this Senator, the Court articulated both a general standard which focused on the broader employment relationship, and stated the application of that standard to the facts of the case, which focused on the immediate jobs in question.

In articulating the rationale of the decision, Chief Justice Burger clarified that the holding was one of equal opportunity, not proportionality of results.

> Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. * * * Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant."—*Id.* at 431, 437.

The *Griggs* test evolved over the years in a long series of lawsuits involving varying factual situations. The early cases did not distinguish between the two possible standards articulated in *Griggs*.

In *New York Transit Authority* v. *Beazer*, 440 U.S. 568, 1978, the Supreme Court suggested that the relevant inquiry is broader than the specifics of the position at hand. In *Beazer*, the New York Transit authority had a

blanket exclusion against employing persons who use narcotic drugs, including those receiving methadone as treatment for heroin addiction. Although that policy allegedly had a discriminatory effect toward blacks and Hispanics, the Court held that the plaintiff failed to prove a title VII violation. Although the opinion indicated that the plaintiff's allegations were rebutted by the Transit Authority's demonstration that its narcotics rule was "job related," Justice Stevens added in a footnote that:

[T]he District Court noted that [the Transit Authority's legitimite goals of safety and efficiency] are significantly served by—even if they do not require—[the Transit Authority's] rule as it applies to all methadone users including those who are seeking employment in non-safety-sensitive positions. * * * The record thus demonstrates that [the Transit Authority's] rule bears "a manifest relationship to the employment in question." [*Griggs* citation.]—440 U.S. 568, 587, fn. 31.

As the case law developed, the Supreme Court became increasingly sensitive to the fact that "unintentional discrimination," while perhaps a useful concept, had the potential to create great abuse.

In *Watson* v. *Fort Worth Bank and Trust*, 108 S.Ct. 2777 (1988), which extended the "disparate impact" analysis to subjective employment and evaluation practices such as interviews and evaluations for the first time. Justice O'Connor cautioned:

We agree that the inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures. It is completely unrealistic to assume that unlawful discrimination is the sole cause of people failing to gravitate to jobs and employers in accord with the laws of chance. * * * It would be equally unrealistic to suppose that employers can eliminate, or discover and explain, the myriad of innocent causes that may lead to statistical imbalances in the composition of their work forces. * * * *If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met.* Allowing the evolution of disparate impact analysis to lead to this result would be contrary to Congress' clearly expressed intent, and it should not be the effect of our decision today.—108 S.Ct. at 2787–88 (emphasis added).

A year later, in *Wards Cove Packing Co.* v. *Atonio*, 109 S.Ct. 2115 (1989), a majority of the Supreme Court reached the next step in disparate impact, or unintentional discrimination, cases.

That decision triggered the current civil rights bill. The Supreme Court said:

[In a] disparate impact case, the dispositive issue is whether a challenged practice serves, in a significant way, the legitimate employment goals of the employer. * * * The touchstone of this inquiry is a reasoned review of the employer's justification for his use of the challenged practice. A mere insubstantial justification in this regard will not suffice, because such a low standard of review would permit discrimination to be practiced through the use of spurious, seemingly neutral employment practices. At the same time though, there is no requirement that the challenged practice be "essential" or "indispensable" to the employer's business for it to pass muster; this degree of scrutiny would be almost impossible for most employers to meet, and would result in a host of evils we have identified above [e.g., quotas].—109 S.Ct. at 2125–26.

I believe this decision to be totally consistent with Griggs, while critics assert that it overrules Griggs. The fundamental question, however, is whether or not Wards Cove sets out an appropriate standard in disparate impact cases. I submit that it clearly does so.

Immediately after that decision, however, the Senator from Massachusetts, Mr. KENNEDY, at the behest of the civil rights community, introduced a bill to overturn the Supreme Court's decision in Wards Cove. That bill would have allowed a "business necessity" defense only when the employer could establish that the challenge practice was: *essential* to effective job performance (emphasis added).

If you will look back at the language used by the Supreme Court in Wards Cove, you will see that it was the obvious intent of Senator KENNEDY's original bill to force employers to impose quotas upon themselves, as it used precisely the language that the Supreme Court said would inevitably result in quotas!

As a consequence, that bill was a quota bill beyond a shadow of a doubt. Had it become law, the only way a prudent employer could avoid being hauled into court by—and losing to—a disgruntled minority plaintiff who was either not hired or was passed over for promotion, would be to hire strictly according to the numbers. The leaders of the civil rights lobbies have never wavered from that goal, and the more elaborate the statutory language they propose, the more litigation their language will engender and the more likely the response of self-imposed quotas by employers will be.

After extended debate ending late in the last Congress, the Congress passed and sent to the President a bill in which the original language had been somewhat modified, but which still overturned the Supreme Court's Wards Cove decision. In the view of the President and most Republicans, that language still would have forced prudent employers to hire by quota. The President's veto was sustained by a margin of one vote here in the Senate. Most Americans agreed that the legislation was a quota bill and vehemently and overwhelmingly opposed it as such.

H.R. 1, as introduced into the House in January, was substantially identical to the vetoed 1990 bill. While H.R. 1, as modified and passed by the House earlier this year, is somewhat milder than its original version in some provisions outside of the ambit of the dispute over quotas, its Wards Cove language is quota language as clearly as was that of the 1990 bill, and is so regarded by the President and by a majority of the American people.

It is my firm opinion that the original language of the legislation introduced by my good friend from Missouri, Senator DANFORTH, which we have been discussing for the last several weeks, was not significantly different from, or less onerous than, H.R. 1 as passed by the House.

That version expressly overruled *Wards Cove* and was complicated enough to provide years of employment for legions of trial lawyers. It attempted, vainly I believe, to codify a rapidly evolving field of court-developed law and to freeze it into a statutory straight jacket. It was just as likely as is H.R. 1 to cause intelligent employers to impose quotas on themselves in order to avoid protracted litigation.

Almost from the beginning when this process started almost 2 years ago, I have been deeply involved with the myriad of issues surrounding the civil rights legislation, even introducing substitute legislation with Senator KASSEBAUM last year and working closely with the administration in the analysis and negotiations throughout.

I voiced these and other considerations with Senator DANFORTH, Senator HATCH, and others of my colleagues and with the administration. As I have already pointed out, the basic 1964 Civil Rights Act says nothing about unintentional discrimination, disparate impact, or business necessity. These are all court constructs, each case dealing with a different fact situation, and they cannot effectively and fairly be codified.

Now through the tireless efforts of Senator DANFORTH, and with the cooperation of Senator KENNEDY, compromise language has been achieved. Building on his innovative idea to look to the Americans with Disabilities Act for key language, Senator DANFORTH was successful in bridging the gap between the administration and the civil rights leadership. The compromise language does not set out hard and fast rules that would straitjacket the Supreme Court's discretion in disparate impact cases, but rather provides Congressional guidance while permitting the Supreme Court the task, and the flexibility, to continue to develop the law in this field.

Mr. President, the profound difference is that, for the better part of 2 years now, we have been debating how to define business necessity. This compromise leaves that problem to the courts of the United States, which is where the concept was first raised, and

where its interpretation should remain. It is fundamentally for that reason that I have now agreed to cosponsor this bill.

Mr. President, this Senator emphatically does not agree with the characterization of the senior Senator from Massachusetts, Senator KENNEDY, that the compromise language overrules Wards Cove. The new language of the bill does nothing to repudiate the business necessity standard articulated in the Wards Cove decision. At most, the Senate has turned the clock back to June 4, 1989, the day before the Wards Cove decision was rendered, has redefined the burdens of proof and production between the parties, and has filed an extremely influential amicus brief with the Supreme Court as to the recommended interpretation of the holdings of Griggs and its progeny regarding business necessity. In the view of this Senator, the Supreme Court is free to render the exact same substantive standard for disparate impact cases as it did in Wards Cove.

The legislative history of the bill which we soon will be debating seems clear on this point. As originally written, section 3 of the bill provided that one of its purposes was:

* * * to overrule the proof burdens and meaning of business necessity in *Wards Cove Packing Co.* v. *Atonio* and to codify the proof burdens and the meaning of business necessity used in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971) * * *.

That provision was substantially modified in the compromise and all references to overruling Wards Cove were dropped. The compromise language of section 3 states that the purpose is:

* * * to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971) and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989) * * *.

This Senator believes it is highly significant that section 3 reaffirms all of the pre-Wards Cove decisions, including the three cases upon which the Supreme Court relied in formulating its disparate impact standard: Watson versus Forth Worth Bank and Trust, New York Transit Authority versus Beazer, and of course, Griggs. See Wards Cove, supra, 109 S.Ct. at 2125–26. Of particular note is the fact that the compromise language affirms the analysis and test articulated in Beazer which I discussed earlier.

Finally, Mr. President, I would draw our attention to the key words of the compromise. The relevant language provides that:

An unlawful employment practice based on disparate impact is established under this title only if—

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; * * *.

Unlike earlier attempts made either by Senator DANFORTH or Senator KENNEDY, this current version of the bill does not attempt to further define the terms "job related" or "business necessity."

Mr. President, the 12 key words of the compromise language—the clause, "job related for the position in question and consistent with business necessity"—are directly borrowed from the Americans with Disabilities Act. Like the compromise bill, the ADA does not define either of the terms, "job related" or "business necessity." Moreover, Mr. President, and perhaps more telling, the ADA was not marked up by any House or Senate Committee, debated by either body or sent to be signed by the President until well after Wards Cove was already the law of the land. To this Senator, that constitutes an implicit approval, or at least a lack of disapproval, of the holding of that case as it applies to the Americans with Disabilities Act.

Thus, Mr. President, this Senator is of the firm belief that this compromise does not preclude the Supreme Court from adopting a standard for disparate impact cases as Justice White wrote in the Wards Cove decision. All we have done is command the Supreme Court to reexamine that standard de novo.

Mr. President, having said all this, the fundamental question still is whether the Wards Cove decision was properly decided by the Supreme Court majority. I submit that it was. Moreover, if Senators understand the essence of Wards Cove, I think they will agree that it states a perfectly fair and appropriate test. Perhaps the clinching argument for this proposition is the fact that, since the date of that decision, plaintiffs have not been losing significantly greater numbers of disparate impact cases than they were before the decision was rendered. The long series of bills seeking to overturn Wards Cove were a solution in search of a problem.

Let me pause at this point to reflect on an ironic point about this topic and the heated debate which has enshrouded it since its introduction last year. Overall, the Danforth proposal, as introduced, was a good bill, and with the incorporation of the compromise language, it is an excellent bill. The fury it has engendered derives almost exclusively from the one provision that I have just addressed at length, and that is the attempt to overturn the Wards Cove decision and return to the standard in Griggs.

The civil rights lobby tried to cause us to believe that restoration of the Griggs standard is essential to the civil rights cause. It has divided this body, this Nation, and the intended beneficiaries of this bill, over those provisions.

But how many legal challenges would have been affected by the changes proposed by the civil rights leadership? How many lawsuits have been brought based solely on charges of unintentional discrimination? The answer is far fewer than the civil rights leadership led us to believe.

According to a study that appeared in the Stanford Law Review this spring, the disparate impact doctrine established by Griggs and its progeny, through 1989, have generated a total of only 101 additional lawsuits. (See, John J. Donohue III and Peter Siegelman, "The Changing Nature of Employment Discrimination Litigation," Stanford Law Review, May 1991, Vol. 43, p. 983, 998.). That is less than 2 percent of the total number of employment discrimination suits. That is correct, less than 2 percent.

The pending civil rights legislation contains much more than the disparate impact provisions, but few in the general public know anything about those parts of the bill. What American not directly involved in this process could tell you even one other provision of the pending legislation? Which of them could tell you that the bill would strengthen the laws prohibiting racial harassment? Who could tell you that the bill would make it easier to challenge discriminatory seniority systems? How many could tell you that the bill prohibits adjustment of fair ability test scores on the basis of race, color, religion, sex or national origin?

And, in spite of the fact that the citizens of this country recently spent several days transfixed by the wrenching spectacle of the sexual harassment charges against now Justice Thomas, who could tell you that the bill contains provisions that address that very issue of sexual harassment? I would venture to say very few because provisions of a bill that do good, that achieve real rather than perceived legal protections, do not make good copy, cannot be captured in a 15-second sound bite, and thus do not reach the general public's purview.

Mr. President, we have reached a compromise in this bill with respect to sexual discrimination and sexual harassment cases. That compromise includes a sliding scale of maximum awards after a jury trial for both consequential damages and for punitive damages.

There are those who are unhappy with that result because, as they rightly point out, such ceilings do not exist with respect to most other litigation, including most other civil rights litigation.

Nevertheless, the proposal represents a significant step forward from present title VII remedies which often, when sexual harassment does not result in driving the victim from a job, have no monetary damages attached to them whatsoever.

Because this Senator has believed through his entire legal career that punitive damages are an inappropriate remedy in any civil litigation, which is in fact the law of this Senator's own home State of Washington, he would not open up these new causes of action to unlimited punitive damages, but would impose the same kind of ceilings on other litigation under this title and under the Civil Rights Act in order to provide the equality of opportunity which should be the goal of all of us.

The same civil rights lobby, to which I have already referred, was willing to scuttle the entire laudable bill by insisting on one segment so divisive as to render a Presidential veto a given and the sustaining of that veto a near certainty.

All of the provisions upon which there was basic agreement were to have been sacrificed for the sole purpose of excoriating the President. It is far better that President Bush be perceived being against civil rights by his veto rather than permitted to enact necessary discrimination and sexual harassment laws by his signature.

Fortunately, however, due to the historic efforts of Senator DANFORTH, Senator DOLE, Senator HATCH, Senator KENNEDY, and of many others, we, instead, will have a real improvement in our civil rights statutes, one that will help us achieve the goal of a color-blind society in the only way possible: through strict adherence to principles of fundamental fairness for all.

And, after all, is that not what civil rights is truly about?

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DASCHLE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CIVIL RIGHTS BILL

Mr. JEFFORDS. Mr. President, today is a day of considerable relief, even joy, for those of us who have been working on the civil rights bill for 2 years, now. I would like to just make a few comments with respect to the passage of that bill.

Mr. President, if nothing else, the last few weeks have made the words "sexual harassment" a household term. It has been on the lips and in the minds of nearly every American.

We do not know the exact extent of the problem, but there is no question that it is a very real problem in today's workplace—in Vermont, and in the rest of the Nation. It is a problem we must deal with.

We know it is a problem, but I think Americans would be shocked to learn that it is a problem with almost no remedy.

A woman today who is sexually harassed but stays on the job can not get a dime for pressing charges. What she will get, in all likelihood, is an even more hostile workplace to work in.

In fact, one court just decided a woman who proved harassment could not even get attorney's fees. Small wonder, then, that many women do not press charges.

For the first time ever, this bill will provide substantial damages for those women who do successfully prove intentional discrimination to the courts.

This will not result in a litigation bonanza as some have charged. There are still lots of reasons why women will not go to court. Many who do will not be successful. And those who do will receive damages that would be limited by the terms of the legislation. The trial bar will not be lining up to take on these cases as some fear.

Just as important, this bill will undo the damage wrought by a series of misguided Supreme Court decisions over the past few years in other areas.

On much of this front, there was very little disagreement. We agreed that we should overturn Patterson. We agreed that we should overturn Lorrance. We agreed that we should overturn Price Waterhouse. We agreed that we should overturn the burden of proof aspect of Ward's Cove. We disagreed, principally, on whether we should overturn or codify the remainder of Ward's Cove decision.

For most Americans, and probably some of my colleagues, the way we toss these case names around would make their eyes glaze over. Let me try to state the issues more succinctly so people understand what this bill does.

We have restored the ability of racial minorities to combat discrimination on the job. We have made clear that discrimination, even in small amounts, is not tolerable. And we have salvaged the ability of women and minorities to challenge discriminatory employment practices.

The debate on this bill has generated far more heat than light. For far too long, opponents have waved the quota issue about for political gain.

While I compliment my colleagues JACK DANFORTH and TED KENNEDY and BOB DOLE for their efforts, my highest praise is for President Bush.

I am sure some of his political advisers would have preferred pressing on with the issue and not pass this bill.

To his credit, President Bush rejected that advice. As a result, today we have a bill that we can all be proud of. Oh, no, we are not all happy, but we can be proud.

We will witness a good bit of revisionist history, but the fact is that this bill was not a quota bill yesterday, it is not a quota bill today, and it will not result in quotas tomorrow.

It is not a perfect bill by any means. It makes legal and political compromises, but it is a vast improvement over the legal landscape of today.

Mr. President, it has been a long road since I joined on the first version of the civil rights bill almost 2 years ago. It has been a road marked by hope and frustration, good faith and frayed tempers.

Near the end of that road, I think we can take some measure of pride in our work. We know the limits of this bill and we will discover more as we go along. But we will have, when this is law, left the country a better place because of our work.

So I commend my colleagues to take a close look at this compromise that we have come to, and I think upon examination and understanding of the issues that they will join me in not only passing the bill but also praising those, especially President Bush, for bringing this day, an important one, I believe, in our society to a successful conclusion.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, are we speaking in morning business?

The PRESIDING OFFICER. The Senator is correct.

NO TIME TO CUT TAXES

Mrs. KASSEBAUM. Mr. President, I am concerned by reports in the news media that we are about to begin a bidding war to see who can promise voters the most generous tax cut package as we head toward next year's elections.

It astonishes me that in a year when we will set the all-time record for deficit spending—an estimated $350 billion in red ink—there now seems to be serious thought to ideas for increasing the deficit still more.

Even more astonishing is the argument that tax cuts are needed to stimulate what all of us agree is, at best, a weak recovery from the recession. If $350 billion in straight deficit spending is not enough to stimulate the economy, what kind of tax cut would it take to do the job?

Mr. President, it may be that these proposals, coming from both sides of the aisle, are smart politics as everyone jockeys for the title of Best Friend of the Middle Class, but they are based on patently bad economics, and their real impact on both the economy and the middle class, I believe, could be devastating.

I believe the one thing that American families want and need right now is a healthy, growing economy, some confidence that there will be a job and they will be able to keep their job. The single most important step toward that goal is lower interest rates. The only way Congress can help lower interest rates is—at the very least—to hold the line on deficit spending.

If, instead, the tax cut bandwagon really gets rolling, we face the real possibility of turning a weak recovery into a renewed recession and putting more millions of workers in the unemployment line. I do not believe very many Americans want to give up their jobs in return for a tax cut.

We have already seen the reaction to this type of tax cut talk on the bond market. Mortgage interest rates are starting up. Young people who are in the middle negotiating mortgages are wondering what is going to happen. I think by this kind of talk, much is being put on hold at the very time we want to indicate some certainty about where we are going.

What we most need right now is some demonstration of fiscal responsibility. What we need least is a partisan bidding war to see who can be the most irresponsible in trying to buy votes next November.

Given the bizarre logic of the tax cut debate, it should be no mystery to anyone why consumers and business lack the confidence that is needed to get our economy moving.

Mr. President, I ask unanimous consent that a statement by Congressman BILL GRADISON from Ohio be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
Washington, DC, October 23, 1991.

DEAR COLLEAGUE: The bidding for tax cuts in the 102nd Congress has started. Sen. Bentsen, Chairman of the Senate Finance Committee, has opened with a $72 billion tax cut plan. Senator Gramm has gone $18 billion higher. Before the rest of us join the auction, we should reflect on whether the country can afford for anyone to win.

The facts are:

1) The proposals are schizophrenic. Incentives to boost consumption with a tax cut conflict with proposals to boost saving by expanding Individual Retirement Accounts and cutting taxes on capital gains. The incentive to consume are designed to speed economic recovery from the recession; the incentives to save are aimed at increasing long-term growth. You can't increase and decrease national saving at the same time.

2) It's too late to boost recovery. The 1990–91 recession is over. The recovery may be weak, but it is under way. By the time an income tax cut affects consumer demand, the recovery will be roughly a year old. By then, stimulus not only will be unnecessary, but will threaten sustained, noninflationary economic growth.

3) It's imprudent to institute saving incentives now. The recovery is lagging partly because consumers are reducing their debt and are reluctant to increase spending. We don't yet know whether this indicates a permanent shift away from consumption toward more private saving (and therefore more investment in plant and equipment). But if the shift is permanent, the need for saving incentives is reduced. It makes sense to wait and see.

4) The proposals increase the deficit. Sen. Bentsen's proposal is to be financed largely out of defense cuts. Yet, substantial defense savings are already incorporated into our budget plans, and they are not even big enough to keep the deficit from rising. They certainly cannot finance a tax cut. Similarly, proposals to boost economic growth through tax incentives for saving reduce revenues, swell the deficit, and increase the government's claim on credit markets—a policy that slows long-term growth.

The lead time on fiscal policy is simply too long for us to try to engage in budget manipulations aimed at offsetting the effects of the recession. Inevitably, we wind up acting well after the time that our actions are most appropriate. It might, of course, be argued that we should still avoid fiscal contraction at this point in the business cycle, but even if we immediately focus all our efforts on deficit reduction, the results would come too late to harm the economic recovery.

At the same time, saving incentives are too weak and uncertain for us to boost long-term economic growth through the tax code. What we can do for growth is reduce the deficit—a stronger and more reliable means of increasing long-term growth than any tax incentive available to us.

Breaking the budget agreement—which most of the tax cut plans do—would send precisely the wrong signal to credit markets. The inevitable result would be higher interest rates at the very time we want to encourage investment. The budget agreement isn't perfect, but without it we can expect higher Federal borrowing and higher interest rates.

Acknowledging these facts probably won't stop the auction. But they will help us understand what we are bidding so furiously to purchase. It's not faster economic growth, but a bigger deficit, lower national savings, and slower long-term growth in our standard of living.

Sincerely,

BILL GRADISON,
Representative in Congress.

Mrs. KASSEBAUM. I just would like to conclude, Mr. President, with my concern that Congress has lost much in the way of trust and confidence of the American people today. We ourselves, of course, have brought it on in many ways. But no one believes anybody anymore. And if we cannot restore some trust and confidence to do some things that are difficult to do, we will have missed an opportunity in buying a short term, maybe, sound bite on the evening news for the long-term well-being of this Nation. I think it should be and is I feel of grave concern to both sides of the aisle about where we are going for the future.

But I really feel very concerned, Mr. President, that at this point we have also upped the ante on who is going to bash Congress the most. We all need each other to be working together, along with the American public, to put a consensus together, and a focus of direction as to where we wish to go.

I yield the floor, Mr. President, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

THE WAR IN CROATIA

Mr. DOLE. Mr. President, the war in Croatia has finally reached the center of the medieval city of Dubrovnik. Wednesday, the Yugoslav military from land and sea, barraged Dubrovnik with hundreds and hundreds of mortars and artillery shells. For over 2 weeks now, the outskirts of the city of Dubrovnik have been under attack and the people who live there have been without water and electricity.

Mr. President, this latest Yugoslav Army assault on Croatia's most prized historic jewel—designated a world cultural monument by the United Nations—is undeniable the clearest signal to date that the Yugoslav army and its ally, the Communist government of Serbia led by President Milosevic, have absolutely no intention of bringing this war to an end until Croatia's people, their culture, and their livelihood are crushed, or until Croatia gives up its freedom and its land.

I have spoken before about the Croatian churches, hospitals, schools, and apartments that have been bombed and shelled by the Yugoslav Army. This is a war against civilians. Over 1,000 people have died since Croatia declared its independence in June. The world was shocked by the attack on Slovenia in June, but by now appears to be numbered by the indiscriminate killing by the hardline forces of the Yugoslav Army. Even humanitarian groups, such as doctors without borders, have been attacked. And there seems to be no end in sight to the war in Croatia, just as there has been no end to the police state created by Serbian President Milosevic in the province of Kosova.

Mr. President, I met with Dr. Ibrahim Rugova this week, the leader of the Albanian democratic opposition in Kosova. The Albanians of Kosova have been living under martial law for over 2 years now. He told me that over 100,000 Albanians have been fired from their jobs; that Albanian elementary and high schools have been closed; that hundreds of Albanians have been arrested. The Albanians are the third largest nationality in Yugoslavia, yet they are denied their political rights both in Kosova and at the Hague Peace Conference in Yugoslavia, where they are not allowed to directly participate. Without Albanian participation, Dr. Rugova reminded, there will be no lasting peace in the region.

Mr. President, I ask unanimous consent that a letter to me from Dr. Rugova on the situation in Kosova be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

PRISHTINE, YUGOSLAVIA,
October 22, 1991.

Hon. ROBERT DOLE,
Republican Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DOLE: During the past months, hostilities have reached a new high in Croatia between Serbian insurgents assisted by the Yugoslav Federal Army and the Croatian National Guard. We, the Albanians of Yugoslavia, have watched in horror as the death and destruction continues on the front lines.

However, the Albanians of Kosova perish on a different front. For more than two years we have lived under a state of marshall law that has been maintained by the Serbian regime. Since 1989, more than 100 people have been murdered, hundreds wounded, more than 100 thousand Albanians have been fired from their jobs, and over 600 thousand have been arrested, detained or imprisoned by Serbian police in Kosova. This year, the Serbian administration has reached a new unprecedented low in Kosova by preventing over 400 thousand Albanian children and over 30 thousand university students from attending their schools.

We are pleased that the European Community has taken the initiative in seeking a solution to the crisis in Yugoslavia. Nevertheless, it is clear that the fighting in Croatia is the result of underlying circumstances, similar to those that exist in Kosova.

We realize that if negotiations at the Peace Conference at The Hague fails to address all elements involved—including the Albanian crisis—there will be no lasting peace in the region.

We appeal to you, Senator Dole, to urge President Bush to take the lead in future negotiations, where all factors must be taken into consideration and to help bring a long-lasting peace to the Balkans.

Enclosed you will find a "Political Declaration," adopted last week by the Coordination Council of Albanian Political Parties of Yugoslavia. We assure you, Senator Dole, that Albanians of Yugoslavia remain determined to resolve this crisis through peaceful and democratic means.

Thank you for your attention, consideration and your assistance.

Sincerely,

DR. IBRAHIM RUGOVA,
President of the Coordination Council of Albanian Political Parties in Yugoslavia.

P.S. The Coordination Council represents over 1 million Albanians and other various ethnic nationals that are registered members of eleven unique political parties.

Mr. DOLE. Mr. President, Dr. Rugova also said that many Americans do not understand the nature of the conflict in Croatia, which is similar to the situation in Kosova. He explained that the Yugoslav Army was fighting this war for one reason: for territory. In other words, this is not a war to protect the rights of the Serbian minority in Croatia—which like those of other minorities should be protected and guaranteed in every republic—this is a war to create a "greater Serbia," which cannot be created at the negotiating table at the Hague.

Only a few months ago, we fought a war against Iraq because Iraq tried to annex Kuwait. Mr. President, the Yugoslav Army and the Serbian Government are trying to do the same thing; hardliner Slobodan Milosevic is the "Saddam" of Serbia.

President Vaclav Havel yesterday made the point that the war in Croatia threatens to destabilize other regions. And when I met with Prime Minister Antall of Hungary 2 weeks ago, he, too, warned that stability in Central Europe was threatened by Milosevic's aggression. Both leaders urged intervention of some kind—both leaders, who only recently themselves were freed from Communist oppression, urged the United States to become involved and to demonstrate leadership.

Well, I agree that the United States must do more than issue perfunctory statements of concern. We must stand on the side of freedom—for Croatians, Albanians, Slovenians, Bosnians—all who yearn for it.

Mr. President, Senator D'AMATO recently introduced legislation, S. 1793, that would impose a trade embargo on Serbia and prohibit United States assistance to Serbia until the Serbian Government ceases its aggression against other ethnic groups on Yugoslavia, and until Serbia agrees to remain within the borders established under the 1974 Yugoslav Constitution.

Last Friday, Serbia rejected the European Community peace proposal at the Hague. This proposal was accepted by the other five republics at the negotiating table. And today, as Dubrovnik and Vukovar continue to be mercilessly pounded, Serbian leaders are meeting in Belgrade to discuss a campaign to create a "greater Serbia."

Mr. President, we cannot wait to take action; we must move forward with the D'Amato sanctions bill. The bill now has 10 cosponsors—Republicans and Democrats—including the chairman of the Foreign Relations Committee. I urge those of my colleagues who are not cosponsors of S. 1793 to take a serious look at its provisions. I hope that the Senate will move forward swiftly to pass this critical legislation. What is happening in Croatia at this very moment is not the new world order; it is the new world horror.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BAUCUS). Without objection, it is so ordered.

FRUSTRATION ABOUT THE HOMELESS

Mr. MOYNIHAN. Mr. President, I rise to call the attention of my colleagues to an article in Monday's New York Times on the homeless in New York City. Our citizens are beyond the point of despair, waiting for us to do something for these mostly mentally ill and drug addicted people. Our current agony has a history in the decisions of the 1950's and 1960's.

At Rockland Hospital in New York State during the early 1950's, Dr. Nathan Klein developed the first tranquilizer, now commonly known as lithium. When Avril Harriman became Governor of New York in 1955, he was encouraged to establish a program to utilize the findings of this new drug. As an assistant to Jonathan Bingham, the commissioner of mental hygiene, I was present at the meeting in the Governor's office when it was decided to establish a $1.5 million program—a considerable amount at that time—to provide the tranquilizer when appropriate to all patients statewide. Almost immediately the population of State mental institutions began to decline.

In 1963, President Kennedy, encouraged by the results of New York State, signed his last bill, the Mental Retardation Facilities and Community Health Centers Construction Act of 1963, a legislative effort to close institutions which housed victims of mental disorders. As an Assistant Secretary of Labor, I was a member of the task force which proposed a draft of this legislation to the President. The act envisioned a system which would take people out of mental hospitals and treat them through local facilities. And the proposition was to have one center for every 100,000 people; 2,000 by the year 1980. Only 450 have been built. Can we then be surprised that deinstitutionalization has failed.

It is long past time that we take steps to remedy the problems of the mentally ill and drug addicted homeless. Recently, Senator DANFORTH and I introduced S. 62, the Homeless Mentally Ill Outreach Act of 1991 which would provide immediate help to the homeless mentally ill, a population which the American Psychiatric Association estimates is 25 to 50 percent of the homeless population. And many more are drug addicted. Some are both. Our bill would require local health personnel to take homeless people off the streets and bring them into local centers where they could receive thorough medical evaluations. After evaluating the homeless, these centers would refer the homeless to the appropriate agencies, help them apply for entitlement programs and devise individualized treatment plans. A National Commission for the Homeless Mentally Ill would also be established to study the availability, accessibility and composition of mental health services for this population. This bill is not a perfect one, but it is a first step toward getting these individuals the treatment that they need.

Mr. President, I ask unanimous consent that the New York Times article be included in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FROM SUBURBS, NEW AID FOR THE HOMELESS

(By William Glaberson)

The wind cut through Central Park just after midnight and the group of homeless men surged around 17-year-old Rory B. Quinn.

In another setting, the teen-ager from Hasting-on-Hudson, a place where the problems of the streets often seem far away, might have been frightened. Instead, he asked in the early morning hours yesterday, "Do you need a blanket?"

There is a backlash of fury, at the begging, the smell and the needs of the homeless. But advocates of the homeless and government officials say there are also signs of a new backlash against the backlash: A growing movement across the metropolitan region of people trying to do something directly about the desperation in the streets. The movement is made up of people who hand out blankets on cold nights, some of them young people like Rory Quinn.

One by one, the men in Central Park wrapped the wool blankets around themselves. Fifty or more of them went off to the tailgates of cars with flashing lights in the small caravan that had come from Westchester. The men collected sandwiches, clothing, toiletries and hot coffee from other suburban teen-agers. Then they slipped back into the shadows and bushes of Central Park where they live.

"Whether you're rich or poor, for anybody who went and saw what I saw, there's no way you can just ignore them anymore," Rory Quinn had said back at Hastings High in Westchester County last week, as he explained the chaperoned monthly trips some of the school's students take to the New York streets.

Agencies like the Coalition for the Homeless, New York Cares and the Youth Service Opportunity Project say the number of people who volunteer in soup kitchens, shelters or, like the Hastings students, the streets, has increased steadily since the late 1980's.

Food and clothing drives are becoming common across the region and organizations like the one Rory Quinn works through, Midnight Run, based in Dobbs Ferry, N.Y., or Bridge, which runs a similar program based in Summit, N.J., have become institutions among the New York City homeless.

Some advocates of the homeless say the value of the programs is limited because they have not grown as fast as the demand for the necessities of life. But other advocates, like Mary E. Brosnahan, the executive director of the Coalition for the Homeless, say the programs accomplish more than can be measured by the relatively small number of stomachs that are filled for a few hours.

Across the lines of class, and, often, race, she said, the volunteers take back to their homes a new sense of the dimensions of the problem and the humanity of the people who do not have homes. "Now it's Sharon, who lives on a steam grate," she said, "not, that black fellow with the cup begging on the corner."

STEREOTYPES FADE AWAY

Karen Gunther, 15, a 10th grader at Hastings High, said she was afraid of homeless people at first. But the stereotypes melted as she got to know names and faces. "If you put President Bush in a shelter, he'd probably feel like the homeless people do," she said. "It might change his perspective."

The new volunteers come from all kinds of towns and neighborhoods in and around the city. No one knows how many there are. They are all ages. But many of them are so young that they do not remember a time when there were not people living on the streets of New York. The New York State Governor's Office for Voluntary Service estimates that some 30 percent of all high-school students in the state are now involved in some type of community service.

Some of those who work in the programs say the starkest contrasts in these new encounters come when the children from the most privileged places come upon the men and women who may be the area's least lucky people.

Last week, girls from the elite Spence School on Manhattan's East Side were working at St. John's Bread and Life Soup Kitchen in Brooklyn's Bedford-Stuyvesant section. Groups from St. Peter's Preparatory School in Jersey City and the private Woodmere Academy on Long Island regularly help ladle out food at places in Manhattan like the Holy Apostles Soup Kitchen in Chelsea.

In the dark of Riverside Park before the group moved on to Central Park, a circle of the Hastings teen-agers formed around Barbara Brown. She is 41, she said, and has been living in the park since she lost her job as a hospital clerk and then her apartment two years ago. She was clutching her belongings and pouring the coffee they gave her into an old soda bottle to save for later, she said. Iced coffee under the stars, she said it would be.

She smiled at them and broke into a ditty with a little dance step she seemed to have performed before for her visitors from the suburbs. "The Midnight Run," a frail voice sang, "is so much fun."

The teen-agers cheered and laughed with her. But there was silence when she looked down, holding her soda bottle of cooling coffee. "If it weren't for you all coming," she said, "a lot of people would not have been able to make winter."

Then Barbara Brown was gone again. Alice Merchant, who is in the 10th grade at Hastings High and who was sitting on a car fender on Riverside Drive, said, "It really puts things in perspective, where you are and what you have."

In their brick high school on the hill, the problems down in the city, where many of their parents work and where they go to concerts and museums, now seem like their problems.

"It's our business, not as suburbanites, but as human beings," said Matthew R. Grossman, who is 16. "it has noting to do with geography."

But on the West Side of Manhattan, residents do not necessarily see things the same way. Many have complained, local official say, about the noisy outsiders who insist on coming in the middle of the night and drawing bands of homeless people. Jerrold Nadler, the Assemblyman from the area, calls the Midnight Run "contemptuous of neighborhood residents" for its policy of late-night deliveries that organizers say is necessary to serve homeless people where they sleep.

DIFFICULT RELATIONSHIPS

Even from the homeless, relationships are sometimes difficult for the high school students to measure. Last year, several of the teen-agers said, they felt they grew especially close to a woman named Carol who lived in Battery Park. They would talk like friends when they saw one another. One girl gave Carol the sneakers off her own feet. The teen-agers brought Carol train tickets and subway tokens so she could attend a dinner for the homeless in Hastings that the high school group was running.

But Carol never appeared, Jeanne Newman, the art teacher who is the coordinator of all the homeless activities at Hastings High, said that other homeless people told her Carol had slipped into a tangle of crack, drinking and prostitution. None of the Hastings High students ever saw Carol again. "My kids," Ms. Newman said "were very, very upset with reality."

One of them was Meredith J. Lue, who graduated last year. On a break from Colgate University, she was back in the early hours of yesterday night making sandwiches and remembering what Carol had taught her friends from Westchester. "There are people who live different lives," Ms. Lue said. "Living in Hastings, we have pretty stable lives and it's not like that everywhere. I think it's important people learn it's not like that so close to us."

When the caravan of cars pulls back onto the Saw Mill Parkway in the early morning hours once a month, the Hastings teen-agers head toward home, soccer games, romance and homework. but many of them said that in the month between their trips to the world that is so close to theirs they often thought about the people of the streets.

"If it's a cold night," said Sarah E. DeVita, who is in 10th grade, "I wonder if they have enough blankets to be warm."

THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) PANEL REPORT ON TUNA-DOLPHINS

Mr. HOLLINGS. Mr. President, on August 16, 1991, three GATT panelists from Hungary, Uruguay, and Switzerland released their report on Mexico's challenge to our Marine Mammal Protection Act [MMPA] and the Dolphin Protection Consumer Information Act. This panel found that the MMPA was inconsistent with this country's obligations under the GATT.

Recently, I was joined by 62 of my colleagues in sending a letter to President Bush urging him to take prompt and decisive action to deal with this panel report. I ask unanimous consent that a copy of that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC, October 3, 1991.

Hon. GEORGE BUSH,
President of the United States, the White House, Washington, DC.

DEAR MR. PRESIDENT: We were alarmed to learn that a General Agreement on Tariffs and Trade (GATT) dispute settlement panel recently determined that U.S. restrictions on imports of tuna under the Marine Mammal Protection Act (MMPA) were inconsistent with U.S. GATT obligations. That legislation, passed in 1972, has been a cornerstone of U.S. environmental policy and has been responsible for significantly reducing the needless destruction of dolphins, a widely recognized international goal.

We have serious misgivings about the conclusions of the GATT panel report. The United States appropriately argued before the panel that the restrictions were designed to protect animal life and to conserve exhaustible natural resources—two policy objectives which justify import restrictions as long as they are not applied in a discriminatory manner. We have relied on this justification in passing legislation to protect the environment and conserve natural resources. The potential negative impact of the GATT panel decision on our ability to effectively address these issues is a matter of great concern to us.

We therefore urge you to take immediate action to demonstrate to the world that the United States remains serious about environmental protection. First, we urge you to fully exercise U.S. rights by blocking, for an appropriate time, the adoption of the GATT panel report. Second, we would be willing to consider binding bilateral or multilateral agreements necessary to achieve full compliance with the objectives of the MMPA. Third, we believe it is imperative for the United States to work with our trading partners to ensure that the GATT fully recognizes the legitimate objectives of protecting the environment and conserving natural resources.

Finally, we urge the Administration to refrain from entering into any agreements on this issue, with any country, until full consultations are made with the appropriate Committees of Congress. We appreciate your attention to this critical issue, and we look forward to receiving your response.

Sincerely,

Bob Packwood, Ted Stevens, Dennis DeConcini, Tim Wirth, Herb Kohl, Slade Gorton, Jay Rockefeller, Daniel Inouye, Ernest F. Hollings, John F. Kerry, Richard Bryan, Patrick Moynihan, Joe Biden, Brock Adams, Max Baucus, Harris Wofford.

Bill Roth, Frank Murkowski, Carl Levin, Dick Lugar, Paul Simon, Al Gore, Ted Kennedy, Terry Sanford, Bob Kasten, Jim Jeffords, John Chafee, Wendell Ford, Alan Cranston, Daniel Akaka, Paul Wellstone, Paul Sarbanes, George Mitchell, Alfonse D'Amato.

Quentin Burdick, Joe Lieberman, Bill Cohen, Tom Harkin, John Glenn, Don Riegle, Steve Symms, Howell Heflin, Frank Lautenberg, Alan Dixon, Chris Dodd, Howard Metzenbaum, David Pryor, Harry Reid, Claiborne Pell, Bill Bradley, Bob Graham, Jim Exon.

Mitch McConnell, Dan Coats, J. Bennett Johnston, Wyche Fowler, Jr., Thomas A. Daschle, Barbara A. Mikulski, Dave Durenberger, Connie Mack, John Seymour, David L. Boren, Charles S. Robb.

Mr. HOLLINGS. As we noted in that letter, the MMPA has been a cornerstone of U.S. environmental policy since its passage in 1972 and has been responsible for significantly reducing the needless destruction of dolphins, a widely recognized goal of the international community.

Whatever happens, I assure my colleagues that we will not halt our efforts to conserve and protect dolphins and other marine mammals, just because three men in Geneva have ruled that the dolphins do not belong to us. Indeed they do not; they belong to the citizens of this world as part of our common heritage, not to any one person or any one country.

That is why we have called on the administration to block the panel report. That must be the first step. As we said in our letter to the President, we must take immediate action to demonstrate that we remain committed to environmental protection. We must make it very clear that this panel report is unacceptable, and we must also reach for a long-term solution.

We must also deal with the broader environmental concerns raised by the ruling; because if this report reflects a correct interpretation of the GATT, then it is clear that the GATT is fundamentally flawed. It is also clear that this report puts into jeopardy our international efforts not only to save the dolphins, but to protect African elephants, whales, and other endangered species; conserve and manage fisheries and ban the use of driftnets; and address global environmental problems like ozone depletion and greenhouse warming.

Some have counseled that this decision is so fresh that we must delay any action to correct the GATT or move beyond it, but I disagree. Indeed, I believe we should not move forward with any new round of GATT negotiations without resolving this. We cannot allow environmental statute after statute to come under attack, and postpone addressing the problem until the Uruguay round concludes and then the next round begins and ends. Waiting for the conclusion of yet another round of multilateral trade negotiations could take 20 years. If we are concerned about the future of this planet and the creatures which dwell on it, we must not delay.

We cannot afford, nor can the planet, to sweep this problem under the rug with some quick, temporary fix. And believe me, the fix is in the works. There are those who recommend we clean this problem up with Mexico in the North American Free Trade Agreement [NAFTA]. After all, legislation implementing the NAFTA will be on a fasttrack.

I take this opportunity to remind the administration of its commitment not to weaken any U.S. environmental standards in the North American Free-Trade Agreement. That commitment would include, I assume, the MMPA. At this time, I ask unanimous consent that an insightful article on this issue written by Jessica Matthews, vice president of World Resources Institute, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DOLPHINS, TUNA AND FREE TRADE

(By Jessica Mathews)

Ten months ago, the United States imposed an embargo on Mexican tuna, which is caught by using practices that indiscriminately slaughter dolphins. Mexico charged that the embargo violated the General Agreement on Tariffs and Trade (GATT). Now, a panel of judges acting in secret (the normal GATT practice), has not only held that the Marine Mammal Protection Act violates GATT, but ruled so broadly that the legitimacy of dozens of U.S. laws, and even of multilateral environmental treaties, is cast into question.

The slow process of tracing the intricate links between trade and the environment was just beginning. The ruling has thrown the scene into chaos, trapping the administration in a morass of conflicting pledges and forcing a frantic search for new guidelines.

The 45-year-old GATT text, like most treaties of its day, does not mention the word "environment," though it does allow trade measures necessary to protect human, plant and animal health or to conserve exhaustible natural resources. Scrutinizing these few words, the GATT judges decided that these exceptions to free trade apply only within national borders. A country can use trade measures to protect its own atmosphere, for example, but not the atmosphere outside its borders.

U.S. laws that would be disallowed under such reasoning include acts to protect the oceans, biological diversity, whales, elephants, fisheries, forests, migrating birds and endangered species. Most international treaties are applied through national laws, so any that employ trade measures are implicated as well, including the Montreal treaty on stratospheric ozone, the treaty banning trade in endangered species and many more.

Further, the judges said, GATT requires equal treatment of products regardless of how they are produced. Thus, tuna is tuna whether it is caught with purse seine nets that kill dolphins, with even deadlier drift nets that kill everything in their 30-mile-long paths or by saner methods that require killing only what humans want to eat.

The panel's rulings may be legally sound, but they are environmental nonsense. No country can protect its own smidgen of air or ocean or living part of the global commons. Trade measures are often the only means short of a multilateral treaty to influence the behavior of other countries. Even within a broad treaty, trade sanctions are an effective tool to discourage free riders, countries that would like to enjoy a treaty's benefits without conforming to its requirements.

In order to win fast-track negotiating status for the Mexican free trade agreement last spring, the Bush administration was forced to assure Congress that it would not allow trade agreements to weaken U.S. environmental protections. Now those laws are threatened more seriously than anyone contemplated, a "worst case scenario" as Rep. Henry Waxman (D-Calif.) calls it, and through a challenge brought by Mexico.

Both governments are running for cover. Awakening belatedly to the ruling's potentially disastrous impact on American public opinion, Mexico purchased full-page ads in U.S. newspapers promising all sorts of dolphin-friendly acts except a commitment to stop their killing. For the time being Mexico has postponed taking its winning ruling before the GATT council, the final decision-making body.

The Bush administration's problems are deeper. Notwithstanding the president's pledge to forbid weakening environmental laws in the name of free trade, U.S. officials have told Mexicans that the government will get the dolphin protection law weakened. Congress, correctly, has no interest in doing

so. Moreover, success could doom the Mexican free trade agreement by confirming the most paranoid fears that free trade is an indirect way of forcing environmental backsliding that could not be achieved directly. If wisdom prevails, the administration will leave the dolphin law alone.

That leaves the problem of what to do about the ruling. Committed to strengthening GATT, the United States wants to avoid a unilateral veto in the council, but letting the ruling stand is out of the question. The broader question is whether the GATT text must be rewritten or whether its many environmental blind spots can be brought up to date through interpretation and precedent. Negotiations on the range of environmental issues linked to GATT would probably be the last straw for the faltering Uruguay round. But leaving the issues unaddressed until the next trade round promises years of wholesale confusion and recurring international clashes.

The tuna embargo is only a small piece of the tangled trade/environment knot. The connections cut every which way, often conflicting. High environmental standards can expand exports by stimulating innovation or curb them by imposing higher costs. Freer trade could improve environmental management or encourage shortsighted plunder of natural resources. This is not a case where the need is to generate sufficient political will to take widely agreed upon actions, but one in which the right answers are not yet clear.

Given the urgency of many environmental trends, the job of finding those answers cannot wait. It should start now—beginning with a suitable demise for the tuna embargo ruling—continuing in parallel to, and beyond, the Uruguay round.

Mr. HOLLINGS. While we have urged the administration to block the GATT panel report, I must point out, that once the dispute settlement text being considered in the Uruguay round is adopted by us on a fast track, we will no longer be able to exercise the option to block bad panel reports. In other words, in this round, the U.S. Government is preparing to give up the very right we are urging the President to use.

In the final paragraph of our letter to the President, we urge the administration to fully consult with Congress before entering into any agreements with any country. The administration has not done this. USTR briefed staff on the panel report in late August. Then in September, staff was informed that a deal had been made with the Mexicans, a deal that apparently included a pledge to lobby Congress to change the MMPA. This hits a sore spot with me.

This administration appears not to have a firm grip on some common definitions. Consult does not mean tell us what happened after the fact. Consult means, according to my Webster's, "to ask the advice or opinion of." Telling us after the fact that a quick agreement was reached with the Mexicans in Mexico City is not consulting, it is informing us of what has already been done.

Much was made of the consultation process during the fast-track debate, but I think we have lost the meaning somewhere. Consultation is supposed to be give and take, not a lecture on expanding export opportunities.

In conclusion, I urge my colleagues to consider the implications of this panel report. Its narrow interpretation of GATT's article XX exceptions opens to international attack a host of existing and proposed legislation to protect and conserve the environment. Some reforms must be made—not 20 years from now, but now. Our planet cannot afford for us to wait.

I must note with some irony that the situation in which we find ourselves today is exactly what we warned the Senate could happen during our debate 4 months ago on fast track. This is precisely why my effort to stop the fast track was supported by Friends of the Earth, Sierra Club, Public Citizen, and many other environmental and consumer groups. Many scoffed at the thought that the GATT was a threat to U.S. environmental policy and yet here we are.

In fact, I would be remiss if I did not recognize the valuable support of the environmental and consumer community on this matter. Not only were these groups far sighted enough to predict this would happen earlier this year, they have worked long and hard to support the integrity of the MMPA. I do not intend to see those efforts go to waste.

SYLVIA CHAVEZ LONG AS ASSISTANT SECRETARY FOR VA CONGRESSIONAL AFFAIRS

Mr. DOMENICI. Mr. President, I am pleased to inform you that this morning the Senate Committee on Veterans' Affairs favorably recommended Sylvia Chavez Long, a fellow native of New Mexico, for the position as Assistant Secretary for Congressional Affairs in the Department of Veterans Affairs. Since the full Senate will be voting on Ms. Long soon, I would like to take this opportunity to first of all congratulate Ms. Long and to take a moment to tell you a little about this noteworthy New Mexican and her achievements.

In her new position, Ms. Long—a native of Santa Fe, NM—will be the Secretary's principal adviser on the VA's legislative agenda, including all policies, plans, and operations related to the Department's congressional affairs programs. Frankly, her confirmation comes as good news not only for the VA and the Congress, who will benefit directly from the expertise Sylvia brings to her position, but also for our veterans, who will benefit from her insight and experience. And, of course, the promotion is a wonderful opportunity and honor for Sylvia herself.

Ms. Long's commitment to veterans' and their interests, is especially commendable, as her record clearly indicates. Before her promotion to Assistant Secretary, Ms. Long served as the VA's Deputy Assistant Secretary for Program Coordination and Evaluation. In this position, she was responsible for policy-level management and for oversight of the Department's evaluative studies and analyses of all data collected regarding the impact of specific programs and their effectiveness. Clearly, this experience has given her valuable insight into how well the programs we have set up for veterans are working, and what weaknesses in the system need to be addressed.

Ms. Long also served as VA special issues coordinator. During that time, she addressed many issues of vital importance to veterans and their families, including post traumatic stress disorder, agent orange, and caring for the aging veterans population. She also represented the Secretary of Veterans Affairs on the Domestic Policy Council Working Group on Children and the Family. These are all issues we are very concerned about in the Congress as well, and I know we share Ms. Long's dedication to providing for veterans in these critical areas.

We in New Mexico are very proud of Sylvia and all she has accomplished in her nearly 20 years of distinguished public service. For over 17 years, she served New Mexico as a senior aide to two good friends of mine—Interior Secretary Lujan, when he was a Congressman for New Mexico's First District, and Secretary Lujan's successor in the House of Representatives, STEVE SCHIFF. In their offices, she handled issues relating to the VA and the Department of Defense, where she helped countless New Mexicans with problems and questions they had relating to military, civilian, or veterans' benefits.

In New Mexico, she also served as State chairman of the Office of the Assistant Secretary of Defense, New Mexico Committee for Employer Support of the Guard and the Reserve. Here she directed a 100-member committee that helped to educate employers of members of the National Guard and Reserve forces on their rights as employers, as well as greater rights and responsibilities. She also currently serves as chairman of the Greater Albuquerque Chamber of Commerce Military Affairs Committee, which serves to maintain a good relationship between the military and business communities in the Albuquerque area.

In addition, she continues to serve on numerous advisory counsels and panels supporting veterans and reservist programs in which her service has always been exemplary. In fact, in 1988, she was awarded the Distinguished Citizen Award by the commander in chief, U.S. Air Force Military Airlift Command, and in 1990 received the Honorary Profile of Courage Award, presented by the New Mexico Vietnam Veterans Leadership Program. She has also received

the Naval Reserve Meritorious Service Medal and the Armed Forces Reserve Medal for her service with the U.S. Navy Reserve.

Again, Mr. President, let me say how very proud all of us in New Mexico are of Sylvia Chavez Long and all she has accomplished. I am very pleased the Veterans' Affairs Committee has recognized her achievements, and I look forward to casting my vote in her favor as well. I am confident she will continue to serve the Congress, the Veterans' Administration, and, most importantly, the veterans of our country with the same enthusiasm and professionalism with which she has always served the people of New Mexico.

THE START TREATY MUST BE POSTPONED

Mr. HELMS. Mr. President, on Tuesday, President Bush and President Gorbachev will meet in Madrid. They will take time out from the Middle East peace discussions to talk about President Bush's recent announcement of unilateral reductions of nuclear weapons and President Gorbachev's announcement of Soviet unilateral cuts.

Of course, the word "Soviet" is obsolete, because no one has yet come up with a convenient word or phrase descriptive of the central government of the former Soviet Union. But that very dilemma points to something far more profound when we hear that the two Presidents will be discussing arms control matters.

The reason there is no simple description of the former Soviet Union is because Russia and its neighboring republics are in flux, both in their relationships to each other and their relationships to whatever central entity results from the breakup. We know that President Gorbachev is President, but we do not know what being President of that entity means anymore. We do not know what powers the central authority will have, or even if it will have the kind of strong authority necessary to carry out successful arms control and arms control verification.

Thus it is very disturbing that President Bush and President Gorbachev will be discussing arms control measures—a sort of minisummit for bilateral arms control in the midst of the Middle East negotiations. Even if clarifications in the separate proposals of the two Presidents are achieved, the result will be a kind of de facto START II, without a treaty to assure verification.

Mr. President, the irony of all of this is that START I—the treaty signed by President Bush and President Gorbachev on July 31—does not yet have a completed text. That text is still under negotiation, and is not scheduled to be sent to the Senate until January.

This is a highly unusual situation. Indeed, Mr. President, it is a totally unprecedented situation. The text of a treaty is always required to be completed before signing, and it is made available to the public immediately. But almost 3 months have gone by, and Congress still does not know what was agreed to in all specifics. This is more than a mere quibble. It is a profound defiance of the advice and consent process.

Because of the difficulty—indeed, I believe the impossibility—of adequate verification, the treaty definitions and formulas are intricate and long. Slight changes in those formulas can have profound impact on the implementation and impact of the treaty.

Experts who have seen the drafts report that major changes in key issues resulted from the postsigning negotiations, and that the text is presently in total disarray, filled with inconsistencies and undefined terms. The still-expanding draft is reported to be more than 750 pages long. Furthermore, there is the problem of the submitted Soviet data, which is reported to contain a serious flaw.

Moreover, while the July 31 treaty was still in the process of change, the Soviet Union itself began to disintegrate. Nineteen days after the signing, the coup of hardliners representing the Soviet KGB military-industrial complex overthrew the President who signed it. The restoration of Gorbachev by Boris Yeltsin, the President of the Russian Republic, did not mean the restoration of his authority. Rather, it meant the restoration of a mere transition figure, a mere placeholder without authority and without a constituency.

At the same time, the independence movements of the former constituent republics has thrown into doubt the practical workability of the START Treaty. If there were indeed a true successor regime to the old Gorbachev regime, the new regime could simply agree to accept the START Treaty as it stands.

But there is no simple successor regime to take up the duties of the old regime under international law. The breakup of the territory leaves installations limited and prohibited by START distributed throughout the geographic region, with command and control procedures impossible to put into effect.

Indeed, some of the republics, such as the Ukraine, have announced the formation of their own armies, and have refused to agree to the provisions of START. Uncertain of the outcome of any future central government, and uncertain, too, what the future government of the Russian Republic might bring, they are hesitant to give up their nuclear bargaining chips. One bullet might change the President of the Russian Republic, or hard-line elements within the military might seek to restore an authoritarian central government as evil—or even more evil—as the empire which has collapsed.

Mr. President, I urge President Bush to be extremely cautious in accepting any clarifications or unilateral declarations on arms control in Madrid, or even in the near future. President Gorbachev is not an appropriate partner for such discussions, because he does not have the commanding authority to make sure even that his own wishes are carried out.

In fact, Mr. President, I go further. I urge President Bush not to send the July 31 START Treaty to the Senate. The treaty must be completely renegotiated, if and when there is a competent authority with whom to negotiate.

It should be remembered that in the 9 months leading up to the signing on July 31, the Soviet hardliners were in complete control of the negotiating process, and demanded that specific further concessions must be made on points where tentative agreement had already been reached. The United States delegation, unfortunately, surrendered to this pressure. The leaders of this group, including General Moiseyev, General Yazov, Foreign Minister Bessmertnykh, Chairman Beklanov of the Military-Industrial Commission [VPK] and KGB Chairman Kryuchkov, are now in prison awaiting trials for treason.

The result of the negotiations with these criminals was a treaty which is fatally flawed in protecting U.S. national security. From those details already released, there appear to be at least five major flaws. The full explanation of these flaws is highly technical, and will be deferred until the full text is made available. But preliminary analysis already shows the following:

First, START completely legalizes two Soviet ICBM's which the Soviets have finally admitted violated SALT I and SALT II, and four others which they have not admitted. In 1982, the Soviets suddenly began flight testing two new types of ICMB's—the SS–24 and the SS–25.

But the SS–25 ICBM turned out to be a prohibited second new type light ICBM, and it was illegal for several reasons—it has about 10 times more than the allowed 5 percent increase in throw-weight, its telemetry was fully encrypted—encoded—illegally, and it violated the prohibition on the proportion of throw-weight used by the single warhead.

Moreover, the SS–24 also turned out to be illegal, because its electronic telemetry signals were fully encrypted in violation of SALT II prohibitions against such encryption. But there was another aspect of the new SS–24 that we have long suspected—it too has turned out to be another illegal heavy ICBM. Its launch weight has turned out to be heavier than 90,000 kilograms.

Second, START is fundamentally unequal, and it is therefore inconsistent

with the equality requirement of the Jackson amendment to SALT I. This inequality results because the missile and bomber warhead down loading provisions and the allowance of large numbers of nondeployed missiles and bombers allow the Soviets the potential to legally have over twice as many warheads as the United States.

Third, START will allow significant Soviet advantages in covert forces, which also will not be counted.

Fourth, START is destabilizing, because it will increase the Soviet first-strike advantage, and allow the further modernization of Soviet heavy and superextra heavy ICBM's designed for a first-strike role.

Fifth, START will not be effectively verifiable, even with the completion of the greatly scaled-down verification provisions still under negotiation.

Therefore, Mr. President, the present START Treaty should not be sent to the Senate. Its terms do not apply to the current situation. The Soviet Union does not exist, and will not have a capable successor regime in international law. And the text of the treaty in its major outline is fatally flawed in protecting U.S. security interests because of concessions to Soviet hardliners—concessions which are probably unnecessary because the hardliners are presently in prison, and may even be executed.

If the situation in Russia and the other republics solidifies, and if a competent central authority emerges in the future, then it will be time to renegotiate START, beginning on equal terms and resulting in an equal treaty.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,414th day that Terry Anderson has been held captive in Lebanon.

Today, two Beirut daily newspapers published a letter from Peggy Say to Terry Anderson. In her letter, Peggy calls the videotape of her brother—released earlier this month—a wonderful gift, noting his good health and sense of humor. And she reminds him:

Thousands of people will be praying for you this Sunday for your birthday and for the continued success of the Perez de Cuellar mission.

More. Sulome, Terry Anderson's daughter, has recorded a video message. And the BBC is broadcasting birthday greetings from John McCarthy and Brian Keenan, perhaps others. I add my own.

Mr. President, I ask unanimous consent that an Associated Press report detailing the day's events be printed in the RECORD at this time.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

TWO PAPERS PUBLISH PEGGY SAY'S LETTER TO ANDERSON

(By Rima Salameh)

BEIRUT, LEBANON.—American hostage Terry Anderson's sister sent him a letter that was published in Beirut newspapers on Friday, two days before his seventh birthday in captivity.

Freed hostages John McCarthy and Brian Keenan also broadcast messages of hope to their former cellmates Friday, including a special birthday wish to Anderson.

The greetings came four days after kidnappers released American educator Jesse Turner, who returned to the United States on Friday. Turner was freed as part of complex negotiations mediated by the United Nations that have raised hopes for the freedom soon of all the Westerners held in Lebanon.

In her letter to Anderson, who turns 44 on Sunday, his sister Peggy Say wrote that the family was heartened by the way he looked on a videotape broadcast by Cable News Network on Oct. 6.

"The family is still basking in the glow of your robust good health, which was quite obvious on your videotape," Say wrote.

"Equally apparent was the survival of your sense of humor and emotional well-being."

"We are very grateful that you were allowed to send us this wonderful (videotape) gift," she wrote.

The letter was published by Beirut's two conservative newspapers, Al-Answar and Ad-Diyar. Other Beirut dailies, including the leading An-Nahar and as-Safir, also received Mrs. Say's letter and plan to publish it Saturday.

Anderson's 6-year-old daughter, Sulome, who was born nearly three months after his capture, sent him a videotaped birthday message, saying she felt he would be out soon.

Anderson, chief Middle East correspondent for the Associated Press, is the longest-held hostage. He was kidnapped on March 16, 1985.

Islamic Jihad, a pro-Iranian Shiite Muslim fundamentalist group, claims it holds Anderson as well as American educator Thomas Sutherland and Anglican church envoy Terry Waite, a Briton.

Keenan, McCarthy and other freed Westerners have said Anderson and other captives are allowed to read newspapers and magazines and listen to radios.

In their radio message on the BBC, McCarthy and Keenan spoke hopefully about what Anderson and the others would encounter when they are finally freed. "I think it struck me, and will probably strike all the boys as they come home, that we are very famous people because of what has been done for us, and that is a little unnerving if you haven't been when you went away," said McCarthy, 34, a television journalist who was released on Aug. 8.

McCarthy wished Anderson a happy birthday and then assured the hostages: "Everything's fine with your families ... It's been a great joy to talk to them and get to know them. When you're ready when you come home, it will be lovely to meet up with you all again, with the families."

Speaking of Anderson's daughter, Sulome, he said: "There's a lot of Terry obviously in her, though they have yet to meet. But God willing, that will be very soon."

Say's letter gave her brother a detailed account of the activities of each family member, as well as the efforts being made by U.N. Secretary-General Javier Perez de Cuellar to free him.

"Thousands of people will be praying for you this Sunday for your birthday and for the continued success of the Perez de Cuellar mission," said the letter.

The United Nations has been trying to arrange a swap of the Western hostages held in Lebanon for an estimated 300 Arab prisoners held by Israel and its proxy militia, the South Lebanon Army.

Perez de Cuellar's efforts came in response to a letter from Islamic Jihad that was brought to him by McCarthy. Since then, three Western captives have been released—Briton Jack Mann as well as Americans Edward Tracy and Turner.

REMOVAL OF INJUNCTION OF SECRECY—TREATY WITH JAMAICA (TREATY DOCUMENT NO. 102–16).

Mr. FORD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Treaty with Jamaica on Mutual Legal Assistance in Criminal Matters (Treaty Document No. 102–16), transmitted to the Senate today by the President; and ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the Government of the United States of America and the Government of Jamaica on Mutual Legal Assistance in Criminal Matters, signed at Kingston on July 7, 1989. I transmit also, for the information of the Senate, the Report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of modern criminals, including members of drug cartels, "white-collar criminals," and terrorists. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) the taking of testimony or statements of witnesses; (2) the provision of documents, records, and evidence; (3) the execution of requests for search and seizures; (4) the serving of documents; and (5) the provision of assistance in proceedings relating to the forfeiture of the proceeds of crime, restitution to the victims of crime, and the collection of fines imposed as a sentence in a criminal prosecution.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

GEORGE BUSH.

THE WHITE HOUSE, *October 25, 1991.*

ALBERT EINSTEIN CONGRESSIONAL FELLOWSHIP PROGRAM

Mr. DOLE. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 208) to make fiscal year 1991 funds available for fiscal year 1992 for the Albert Einstein Congressional Fellowship Program.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

The resolution (S. Res. 208) was agreed to, as follows:

S. RES. 208

Resolved, That section 4 of the resolution entitled "A resolution to establish an Albert Einstein Congressional Fellowship Program", approved August 2, 1991, is amended by adding at the end of the following new subsection:

"(c) AVAILABILITY.—The funds made available under subsection (a) for fiscal year 1991 shall remain available through September 30, 1992.".

RESTORATION OF THE AUTHORITY OF THE SECRETARY OF EDUCATION TO MAKE CERTAIN PRELIMINARY PAYMENTS TO LOCAL EDUCATIONAL AGENCIES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of S. 1848, the dropout prevention technical correction amendment of 1991; and that the Senate then proceed to its immediate consideration; that the bill be deemed read three times and passed; and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill was deemed read three times and passed, as follows:

S. 1848

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Dropout Prevention Technical Correction Amendment of 1991".

SEC. 2. TECHNICAL AMENDMENT.

Paragraph (2) of section 5(b) of the Act entitled "To provide financial assistance to local educational agencies in areas affected by Federal activities and for other purposes", approved September 30, 1950 (20 U.S.C. 240(b)(2)) is amended to read as follows:

"(2) As soon as possible after the beginning of any fiscal year, the Secretary shall, on the basis of a written request for a preliminary payment from any local education agency that was eligible for a payment for the preceding fiscal year on the basis of entitlements established under section 2 or 3, make such a preliminary payment—

"(A) to any agency for whom the number of children determined under section 3(a) amounts to at least 20 per centum of such agency's total average daily attendance, of 75 per centum of the amount that such agency received for such preceding fiscal year on the basis of such entitlements; and

"(B) to any other agency, of 50 per centum of the amount that such agency received for such preceding fiscal year on the basis of such entitlements.".

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NAVAJO-HOPI RELOCATION HOUSING PROGRAM REAUTHORIZATION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 260, S. 1720, regarding Navajo-Hopi housing; that the committee amendment be adopted; that any statements appear at the appropriate place in the RECORD; that the bill be read a third time and passed and the motion to reconsider be laid upon the table.

There being no objection, the Senate proceeded to consider the bill (S. 1720) to amend Public Law 93-531 (25 U.S.C. 640d et seq.) to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program for fiscal years 1992, 1993, 1994, and 1995, which had been reported from the Select Committee on Indian Affairs, with an amendment on page 2, after line 8, insert the following:

SEC. 3. NAVAJO-HOPI RELOCATION.

(a) AMENDMENT.—Section 12(b)(2) of the Act of December 22, 1974 (25 U.S.C. 640d-11(b)(2)), is amended by adding at the end thereof the following new sentence: "The Commissioner serving at the end of a term shall continue to serve until his or her successor has been confirmed in accordance with paragraph (1) of this subsection.".

(b) EMPLOYEES.—Section 12(b)(3) of the Act of December 22, 1974 (25 U.S.C. 640d-11(b)(3)) is amended to read as follows:

"(3) The Commissioner shall be a full-time employee of the United States, and shall be compensated at the rate of basic pay payable for level IV of the Executive Schedule.".

(c) POWERS.—(1) Section 12(d)(1) of the Act of December 22, 1974 (25 U.S.C. 640d-11(d)) is amended to read as follows:

"(d) POWERS OF COMMISSIONER.—(1) Subject to such rules and regulations as may be adopted by the Office of Navajo and Hopi Indian Relocation, the Commissioner shall have the power to—

"(A) appoint and fix the compensation of such staff and personnel as the Commissioner deems necessary in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, but at rates not in excess of a position classified above a GS-15 of the General Schedule under section 5108 of such title; and

"(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $200 a day for individuals.".

(d) The amendments made by this section shall not cause any employee of the Office of Navajo and Hopi Indian Relocation to be separated or reduced in grade or compensation for 12 months after the date of enactment of this Act.

(e) The position of Executive Director of the Office of Navajo and Hopi Indian Relocation and Deputy Executive Director of such Office shall on and after the date of the enactment of this Act, be in the Senior Executive Service.

(f) Any employee of the Office of Navajo and Hopi Indian Relocation on the date of the enactment of this Act shall be considered an employee as defined in section 2105 of title 5, United States Code.

(g) COMMISSIONER.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"Commissioner, Office of Navajo and Hopi Indian Relocation.".

So as to make the bill read:

S. 1720

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Navajo-Hopi Relocation Housing Program Reauthorization Act of 1991".

SEC. 2. REAUTHORIZATION OF APPROPRIATIONS.

Subsection (a) of section 25 of Public Law 93-531 (25 U.S.C. 640d-24(a)) is amended by striking out "and 1991." in paragraph (8) and inserting in lieu thereof "1991, 1992, 1993, 1994, and 1995.".

SEC. 3. NAVAJO-HOPI RELOCATION.

(a) AMENDMENT.—Section 12(b)(2) of the Act of December 22, 1974 (25 U.S.C. 640d-11(b)(2)), is amended by adding at the end thereof the following new sentence: "The Commissioner serving at the end of a term shall continue to serve until his or her successor has been confirmed in accordance with paragraph (1) of this subsection.".

(b) EMPLOYEES.—Section 12(b)(3) of the Act of December 22, 1974 (25 U.S.C. 640d-11(b)(3)) is amended to read as follows:

"(3) The Commissioner shall be a full-time employee of the United States, and shall be compensated at the rate of basic pay payable for level IV of the Executive Schedule.".

(c) POWERS.—(1) Section 12(d)(1) of the Act of December 22, 1974 (25 U.S.C. 640d-11(d)) is amended to read as follows:

"(d) POWERS OF COMMISSIONER.—(1) Subject to such rules and regulations as may be adopted by the Office of Navajo and Hopi Indian Relocation, the Commissioner shall have the power to—

"(A) appoint and fix the compensation of such staff and personnel as the Commissioner deems necessary in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, but at rates not in excess of a position classified above a GS-15 of the General Schedule under section 5108 of such title; and

"(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $200 a day for individuals.".

(d) The amendments made by this section shall not cause any employee of the Office of Navajo and Hopi Indian Relocation to be separated or reduced in grade or compensation for 12 months after the date of enactment of this Act.

(e) The position of Executive Director of the Office of Navajo and Hopi Indian Relocation and Deputy Executive Director of such Office shall on and after the date of the enactment of this Act, be in the Senior Executive Service.

(f) Any employee of the Office of Navajo and Hopi Indian Relocation on the date of the enactment of this Act shall be considered an employee as defined in section 2105 of title 5, United States Code.

(g) COMMISSIONER.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"Commissioner, Office of Navajo and Hopi Indian Relocation."

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

So the bill (S. 1720) was deemed read the third time and passed.

ORDER FOR STAR PRINT—SENATE JOINT RESOLUTION 210

Mr. DOLE. Mr. President, on behalf of Senator KASSEBAUM, I ask unanimous consent that Senate Joint Resolution 210 be star-printed to reflect the following change that I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL INTERMODAL SURFACE TRANSPORTATION SYSTEM

Mr. FORD. Mr. President, I understand the Senate has received from the House H.R. 2950, the Intermodal Surface Transportation Act. On behalf of Senator MOYNIHAN, I ask that the bill be read for the first time.

The PRESIDING OFFICER. The clerk will read the bill by title for the first time.

The legislative clerk read as follows:

A bill (H.R. 2950) to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

Mr. FORD. Mr. President, now I ask for its second reading.

The PRESIDING OFFICER. Is there objection.

Mr. DOLE. I object.

The PRESIDING OFFICER. Objection is heard. Under the rule, the bill will lie over awaiting its second reading on the next legislative day.

MOTOR VOTER BILL—S. 250

Mr. FORD. Mr. President, I would inquire of the Republican leader if I am correct in my understanding that he is not in position to give consent to proceed to S. 250, the motor-voter bill.

Mr. DOLE. The Senator is correct, I am not in position to do that.

CLOTURE MOTION

Mr. FORD. In view of that, Mr. President, on behalf of the majority leader I now move to proceed to Calendar No. 89, S. 250, and I send to the desk a cloture motion.

The PRESIDING OFFICER. The cloture motion, having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 250, a bill to establish national voter registration procedures for Federal elections, and for other purposes.

George Mitchell, Harry Reid, John Glenn, Terry Sanford, Wendell Ford, Richard Bryan, J. Lieberman, Herb Kohl, Carl Levin, Paul Wellstone, Frank Lautenberg, Howard Metzenbaum, Dennis DeConcini, Timothy E. Wirth, Daniel K. Akaka, Alan J. Dixon.

Mr. FORD. Mr. President, on behalf of the majority leader, I withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that the vote on the cloture motion occur at a time to be determined by the majority leader, following consultation with the Republican leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. And that the live quorum be waived.

Mr. FORD. I apologize to the Republican leader.

And that the mandatory live quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, a withdrawal, and a treaty which were referred to the appropriate committees.

(The nominations, withdrawal, and treaty received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:45 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2950. An act to develop a national intermodel surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

At 11:53 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolutions:

H.R. 470. An act to authorize the Secretary of Transportation to release the restrictions, requirements, and conditions imposed in connection with the conveyance of certain lands to the city of Gary, Indiana;

S.J. Res. 192. Joint resolution designating October 30, 1991, as "Refugee Day"; and

H.J. Res. 360. Joint resolution making further continuing appropriations for the fiscal year 1992, and for other purposes.

The enrolled bill and joint resolution were subsequently signed by the President pro tempore [Mr. BYRD].

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 2950. An act to develop a national intermodel surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, October 25, 1991, he had presented to the President of the United States the following enrolled joint resolutions:

S.J. Res. 160. Joint resolution designating the week beginning October 20, 1991, as "World Population Awareness Week"; and

S.J. Res. 192. Joint resolution designating October 30, 1991 as "Refugee Day."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 2893. A bill to extend to 1991 crops the disaster assistance provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (Rept. No. 102–195).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance:

Janet A. Nuzum, of Virginia, to be a member of the U.S. International Trade Commis-

sion for the remainder of the term expiring June 16, 1996; and

Carol T. Crawford, of Virginia, to be a member of the U.S. International Trade Commission for the term expiring June 16, 1999.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LIEBERMAN:

S. 1875. A bill to amend the Internal Revenue Code of 1986 to increase the personal exemption and to allow a refundable credit for families with young children; to the Committee on Finance.

S. 1876. A bill to amend the Internal Revenue Code of 1986 to establish the same income tax schedule for individuals filing as heads of households as married individuals filing jointly; to the Committee on Finance.

By Mr. BOND (for himself, Mr. DANFORTH, Mr. GRASSLEY, Mr. D'AMATO and Mr. CRANSTON):

S. 1877. A bill to require the use of child restraint systems on commercial aircraft; to the Committee on Commerce, Science, and Transportation.

By Mr. MACK:

S. 1878. A bill to amend section 518 of the National Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DASCHLE:

S. 1879. A bill to authorize the adjustment of the boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LEVIN:

S. 1880. A bill to amend the District of Columbia Spouse Equity Act of 1988; to the Committee on Governmental Affairs.

By Mr. BENTSEN:

S. 1881. A bill to amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the United States International Trade Commission; to the Committee on Finance.

By Mr. FORD:

S. 1882. A bill to authorize extensions of time limitations in a FERC-issued license; to the Committee on Energy and Natural Resources.

By Mr. JOHNSTON (by request):

S.J. Res. 219. A joint resolution to approve the location of a memorial to George Mason; to the Committee on Energy and Natural Resources.

By Mr. MITCHELL (for himself and Mr. COHEN):

S.J. Res. 220. A joint resolution to designate the Provasoli-Guillard Center for the Culture of Marine Phytoplankton as a National Center and Facility; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ROTH:

S. Res. 207. A resolution expressing the sense of the Senate regarding the recommendations of the United Nations study group on international arms sales; to the Committee on Foreign Relations.

By Mr. DOLE (for Mr. HATFIELD):

S. Res. 208. A resolution to make fiscal year 1991 funds available for fiscal year 1992 for the Albert Einstein Congressional Fellowship Program; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LIEBERMAN:

S. 1875. A bill to amend the Internal Revenue Code of 1986 to increase the personal exemption and to allow a refundable tax credit for families with young children; to the Committee on Finance.

S. 1876. A bill to amend the Internal Revenue Code of 1986 to establish the same income tax rate schedule for individuals filing as heads of households as married individuals filing jointly; to the Committee on Finance.

TAX RELIEF FOR WORKING FAMILIES

Mr. LIEBERMAN. Mr. President, I rise today to introduce legislation aimed at reducing the income tax burden of working families in America. Middle-class families have seen their real income decline during the past several decades while their tax burden has continued to go up. The fact is that only those families making $120,000 or more have had a substantial increase in the real income over this period of time and their tax burden has actually gone down. It is time to restore fairness and equity to the average working families in America, and that must be done through tax relief.

Tax relief could not come at a more critical time for the American people. Over the past several decades, prices have risen while real income for many people has actually declined. For example, in 1970, the price of a new car was equivalent to a third of the average family's income. Now a new car's price is equal to nearly half a family's income.

Mortgage payments in the 1950's accounted for just 14 percent of family income. Today, mortgages eat up nearly 44 percent of family income, even though many families now include two wage earners.

Add higher taxes to that reality, and we can easily see why the American people are hurting.

Mr. President, one of the factors that has contributed to the tax burden on families has been the erosion of the value of the dependent exemption. The actual value of today's exemption of $2,150 is much lower than it was in 1948 when it first went into effect. At that time, the personal exemption was actually sufficient to offset most of the costs of actually raising a child. In 1948, the dependent exemption of $600 was equal to 42 percent of the per capita personal income. Today's $2,150 exemption has far less value. It is equal to about 11 percent of per capita personal income.

The dependent exemption also provides little benefit at all to workers who struggle at the lower end of the wage scales, while the exemption's value goes up as income rises. That, to me, is inequitable, because richer Americans have less need for help in paying for a child's upbringing.

And so today I am introducing the Family Tax Exemption and Tax Credit for Young Children Act, which will increase the dependent exemption to $7,000 per dependent which, in my opinion, is a level much closer to the real cost of raising a child in today's world.

In order for my legislation to be affordable as well as effective, it increases the dependent exemption for each child under 10 years of age, and it equalizes the value of the exemption across all income levels.

Under current law, the exception is worth $322.50 per child for families in lower tax brackets, and up to $666.50 for families in the highest tax brackets. My legislation will make the exemption worth $1,050 per child under the age of 6, regardless of what the family's income is. By maximizing the value of the exemption for younger children, we target assistance to families who need it most, and help them to either have one parent stay home with the child, or afford quality day care. The bill includes a gradual phase out of the exemption's value, with exemptions worth $750 for each child at age 9. At age 10, the value of the exemption returns to the current level.

The Family Tax Exemption and Tax Credit for Young Children Act also provides a refundable supplemental young-child tax credit to working families applying for the earned income tax credit. The supplemental credit is equivalent in value to the benefit received by families that qualify for the personal exemption increase.

The second piece of legislation I am introducing today, Mr. President, is the Heads of Households Tax Rate Reform Act, which will remove the tax bias against single working parents and thus provide them with much-needed tax relief.

Approximately 25 percent of the households in the United States with children under the age of 18 are headed by a single parent. Under the existing rate schedule, single working parents pay up to 21 percent more in taxes than married workers who file joint tax returns. Now that is just unfair. It is a penalty that is very difficult to understand because single working parents

often have a harder time meeting their expenses because there is only one income coming into that family.

There is no excuse for an unfair tax differential by which single parents are penalized simply because a spouse is no longer present in the home. Under my legislation, the head-of-household rate schedule will be the same as that for married individuals.

During these difficult economic times, America's working families need tax breaks, not tax increases. America's economy needs help, too, and by getting more money in the pockets of average working families, we can help them make ends meet, purchase needed goods and help them to save, injecting our economy with greatly needed capital to fuel economic growth.

Mr. President, working family tax relief is not the total answer to our economic woes. I have supported Senator MOYNIHAN's efforts to lower Social Security taxes on wage earners and businesses which I think still is the most sensible way to offer tax reform and relief to the American people and American businesses.

Earlier this week, I spoke in this Chamber about the serious need, urgent need for serious economic growth incentives for American business. Tax relief for the middle class must be accompanied by tax incentives for business and other cooperative efforts between Government and business to create new jobs, for the reality is that tax relief will mean very little to a worker who loses his or her job.

Mr. President, there has been a rising chorus, and it is a bipartisan chorus, going up from this Congress in the last couple of weeks. If I can paraphrase an old refrain, I would say, Mr. President, read my lips, let us cut taxes. Let us cut taxes because that is the way America has normally come out of an economic recession.

We sure are in a deep recession today. Let us cut taxes so we can put more money into the hands of the middle class which has been paying a lot more in recent years and getting a lot less from Government. Let us cut taxes on business so they will invest and create the kind of jobs that will make us competitive and protect our future. Read our lips, Mr. President, Let us cut taxes because it is good for America.

I ask unanimous consent, Mr. President, that the complete text of these two bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1875

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN PERSONAL EXEMPTION AMOUNT.

(a) IN GENERAL.—Paragraph (1) of section 151(d) of the Internal Revenue Code of 1986 (defining exemption amount) is amended to read as follows:

"(1) DEFINITION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'exemption amount' means $2,300.

"(B) TAXPAYERS WITH YOUNG CHILDREN.—In the case of—

"(i) a 15-percent bracket taxpayer—

"With a child who has:	The exemption amount shall be:
Not attained the age of 6 years	$7,000
Attained the age of 6 years but not the age of 7 years	$6,500
Attained the age of 7 years but not the age of 8 years	$6,000
Attained the age of 8 years but not the age of 9 years	$5,500
Attained the age of 9 years but not the age of 10 years	$5,000,

"(ii) a 28-percent bracket taxpayer—

"With a child who has:	The exemption amount shall be:
Not attained the age of 6 years	$3,750
Attained the age of 6 years but not the age of 7 years	$3,482
Attained the age of 7 years but not the age of 8 years	$3,214
Attained the age of 8 years but not the age of 9 years	$2,946
Attained the age of 9 years but not the age of 10 years	$2,679,

and

"(iii) a 31-percent bracket taxpayer—

"With a child who has:	The exemption amount shall be:
Not attained the age of 6 years	$3,387
Attained the age of 6 years but not the age of 7 years	$3,145
Attained the age of 7 years but not the age of 8 years	$2,903
Attained the age of 8 years but not the age of 9 years	$2,661
Attained the age of 9 years but not the age of 10 years	$2,419.

For purposes of this subparagraph, the age of a child shall be determined as of the close of the calendar year in which or with which the taxable year of the taxpayer ends."

(b) SPECIAL RULES.—Subsection (d) of section 151 of such Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULES RELATING TO EXEMPTION AMOUNT FOR YOUNG CHILDREN.—

"(A) DEFINITIONS.—For purposes of paragraph (1)—

"(i) 15-PERCENT BRACKET TAXPAYER.—The term '15-percent bracket taxpayer' means a taxpayer whose taxable income for the taxable year (determined before the application of paragraph (1)(B) of this subsection) is subject to a rate of tax under section 1 not greater than 15 percent.

"(ii) 28-PERCENT BRACKET TAXPAYER.—The term '28-percent bracket taxpayer' means a taxpayer whose taxable income for the taxable year (determined before the application of paragraph (1)(B) of this subsection) is subject to a rate of tax under section 1 greater than 15 percent but not greater than 28 percent.

"(iii) 31-PERCENT BRACKET TAXPAYER.—The term '31-percent bracket taxpayer' means a taxpayer whose taxable income for the taxable year (determined before the application of paragraph (1)(B) of this subsection) is subject to a rate of tax under section 1 greater than 28 percent but not greater than 31 percent.

"(B) ELIGIBILITY LIMITATION.—Paragraph (1)(B) of this subsection shall not apply in the case of any taxpayer whose adjusted gross income for the taxable year exceeds the threshold amount."

(c) DENIAL OF CHILD CARE CREDIT FOR DEPENDENTS FOR WHICH DEDUCTION FOR PERSONAL EXEMPTIONS ALLOWED.—Section 151(d) of such Code, as amended by subsection (b), is further amended by adding at the end thereof the following new paragraph:

"(6) DENIAL OF CHILD CARE CREDIT FOR DEPENDENTS FOR WHICH ELECTION IS MADE UNDER THIS SECTION.—If the taxpayer elects to take a child into account under paragraph (1)(B) of this subsection for any taxable year, such child shall not be treated as a qualifying individual under section 21 for such taxable year."

(d) CONFORMING AMENDMENTS.—Subparagraph (A) of section 151(d)(4) of such Code is amended—

(1) by striking "1989, the dollar amount" in the matter preceding clause (i) and inserting "1992, each dollar amount", and

(2) by striking "1988" in clause (ii) and inserting "1991".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 2. REFUNDABLE CREDIT FOR CHILDREN.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

"SEC. 35. TAX CREDIT FOR CHILDREN.

"(a) GENERAL RULE.—In the case of an individual eligible for the credit allowed under section 32, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the applicable amount multiplied by the number of qualified personal exemptions of the taxpayer for the taxable year.

"(b) QUALIFIED PERSONAL EXEMPTION.—For purposes of this section, the term 'qualified personal exemption' means any personal exemption which (but for section 151(d)(3)) would be allowed to the taxpayer under section 151 for a child of the taxpayer (as defined in section 151(c)) who has not attained age 10 at the close of the calendar year in which the taxable year of the taxpayer begins.

"(c) APPLICABLE AMOUNT.—For purposes of this section, the applicable amount shall be determined under the following table:

"In the case of a child who has:	The applicable amount is:
Not attained the age of 6 years	$1,050
Attained the age of 6 years but not the age of 7 years	$975
Attained the age of 7 years but not the age of 8 years	$900
Attained the age of 8 years but not the age of 9 years	$825
Attained the age of 9 years but not the age of 10 years	$750.

"(d) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1992, the dollar amounts contained in subsection (c) shall be increased by an amount equal to—

"(1) each such dollar amount, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins by substituting 'calendar year 1991' for 'calendar year 1989' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or if such increase is a multiple

of $5, such increase shall be rounded to the next highest multiple of $10).

"(e) COORDINATION WITH MEANS-TESTED PROGRAMS.—Any refund made by reason of this section, and any payment made under section 7524, shall be treated in the same manner as refunds made by reason of section 32 and payments made under 3507 for purposes of—

"(1) sections 402, 1612, and 1613 of the Social Security Act and title XIX of such Act, and

"(2) the laws referred to in paragraphs (1) through (5) of section 32(j)."

(b) DENIAL OF DEDUCTION FOR PERSONAL EXEMPTIONS OF DEPENDENTS FOR WHICH CREDIT ALLOWED.—Section 151(d) of such Code, as amended by section 1, is further amended by adding at the end thereof the following new paragraph:

"(7) DENIAL OF DEDUCTION FOR PERSONAL EXEMPTIONS FOR WHICH CREDIT ALLOWED.—The exemption amount for any dependent with respect to which a credit under section 35 is allowed for the taxable year shall be zero."

(c) TECHNICAL AMENDMENT.—Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period "or from section 35 of such Code".

(d) CLERICAL AMENDMENT.—The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following new items:

"Sec. 35. Tax credit for children.

"Sec. 36. Overpayments of tax."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991. Section 15 of the Internal Revenue Code of 1986 shall not apply to any amendment made by this section.

SEC. 3. ADVANCE PAYMENTS OF EARNED INCOME CREDIT AND CREDIT FOR CHILDREN.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7524. ADVANCE PAYMENTS OF EARNED INCOME CREDIT AND CREDIT FOR CHILDREN.

"(a) GENERAL RULE.—The Secretary of the Treasury shall make advance payments of refunds to which eligible taxpayers are entitled by reason of sections 32 and 35.

"(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means, with respect to any taxable year, any taxpayer if—

"(1) the taxpayer elects during the preceding taxable year to receive payments under this section during the taxable year and declares his intention not to receive payments under section 3507 for the taxable year,

"(2) the taxpayer furnishes, as such time and in such manner as the Secretary may prescribe, to the Secretary such information as the Secretary may require in order to—

"(A) determine whether the taxpayer will be entitled to a refund by reason of sections 32 and 35 for the taxable year, and

"(B) estimate the amount of such refund, and

"(3) the Secretary determines that the taxpayer will be so entitled and the estimated amount of such refund (without regard to this section).

"(c) TIMING AND AMOUNT OF PAYMENTS.—

"(1) AGGREGATE PAYMENTS.—The aggregate payments made by the Secretary under this section to a taxpayer for the taxable year shall equal approximately 80 percent of the Secretary's estimate under subsection (b)(3).

"(2) QUARTERLY PAYMENTS.—The Secretary shall make the payments under this section on a quarterly basis in approximately equal amounts.

"(d) OTHER PROVISIONS.—

"(1) PROCEDURES TO ASSURE PAYMENTS TO INDIVIDUALS HAVING ADJUSTED GROSS INCOMES OF $12,000 OR LESS.—If a taxpayer has an adjusted gross income of $12,000 or less for any taxable year and the Secretary accepts a taxpayer's certification that he reasonably expects that his income tax return for the following taxable year will be substantially similar to his income tax return for the taxable year, the Secretary shall make all reasonable efforts to make payments under this section to such taxpayer for such following taxable year.

"(2) CHANGES IN ESTIMATED REFUND.—If, at any time, the Secretary changes his estimate under subsection (b)(3) for any taxable year, the Secretary may adjust subsequent payments under this section for such taxable year to reflect the new estimate.

"(3) COORDINATION OF PAYMENTS WITH CREDITS.—

"(A) IN GENERAL.—If any payment is made by the Secretary under this section to any taxpayer for a taxable year, then the taxpayer's tax imposed by chapter 1 for such taxable year shall be increased by the aggregate of such payments.

"(B) RECONCILIATION.—Any increase in tax under subparagraph (A) shall not be treated as a tax imposed by chapter 1 for purposes of determining the amount of any credit allowable under subpart C of part IV of subchapter A of chapter 1 other than the credits allowed by sections 32 and 35."

(b) CLERICAL AMENDMENT.—The table of sections for such chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7524. Advance payments of earned income credit and credit for children."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

S. 1876

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCOME TAX RATE SCHEDULE FOR HEADS OF HOUSEHOLDS.

(a) IN GENERAL.—The table in subsection (b) of section 1 of the Internal Revenue Code of 1986 (relating to tax imposed) is amended to read as follows:

"If taxable income is:	The tax is:
Not over $32,450	15% of taxable income.
Over $32,450 but not over $78,400	$4,867.50, plus 28% of the excess over $32,450.
Over $78,400	$17,733.50, plus 31% of the excess over $78,400."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1991.

By Mr. BOND (for himself, Mr. DANFORTH, Mr. GRASSLEY, Mr. D'AMATO, and Mr. CRANSTON):

S. 1877. A bill to require the use of child restraint systems on commercial aircraft; to the Committee on Commerce, Science, and Transportation.

USE OF CHILD RESTRAINT SYSTEMS ON COMMERCIAL AIRCRAFT

• Mr. BOND. Mr. President, there is a group of airline passengers who receive absolutely no protection in the event of an accident or severe air turbulence. They are our youngest travelers—infants and toddlers under the age of 2. While their parents and brothers and sisters, from the age of 3 on up, cannot fly unless they are safely buckled in by a seat belt, babies and toddlers are allowed to travel in their parents laps. Sadly, the record shows that if there is strong turbulence or an accident, the parents are unable to prevent the child from being flung from their arms. The result is either severe injury or death.

Current FAA regulations are vague and unclear. If parents try to bring a child safety seat onto the plane, they are either prohibited from doing so or so restricted in its use as to make it ineffectual.

Today, I introduce legislation which would clear up the confusion and protect this vulnerable group of passengers. Senator DANFORTH, GRASSLEY, D'AMATO, and CRANSTON have joined me as cosponsors. The measure is simple and straightforward. It directs the Federal Aviation Administration to promulgate regulations requiring an acceptable form of restraint for children under 2 who are too small to be adequately protected by adult seat belts on airplanes. Through testing, the FAA will be able to determine the best form of restraint to require. For example, it could require the use of child safety seats, which since 1987 have been approved for use in both automobiles and aircraft. However, if a new and innovative restraint were developed, it could approve that, also.

The additional costs for parents would not be onerous. The majority of airlines, already permit the free use of vacant seats for children under 2. The Air Transport Association estimates that over 95 percent of all flights currently fly at less than full capacity, so vacant seats would be available on many flights. In addition, many airlines offer reduced fares for children.

The FAA is currently considering a change in its current regulations which would require airlines to allow parents to use a child safety seat if they bring one on board. In my view, this is inadequate. I believe that our children's safety can only be assured by a mandatory rule which requires all children under 2 to be protected when flying.

I introduced an identical measure last year with Senator DANFORTH. The Senate passed it twice; unfortunately the House did not act on it. My legislation is endorsed by the Association of Flight Attendants, the Air Transport Association, and the Aviation Consumer Action Project.

I urge my colleagues support for this important child safety measure.•

• Mr. GRASSLEY. Mr. President, I rise to express my strong support for legislation that is being introduced by Senator BOND today that would require that the Federal Aviation Administration propose rules that would provide for restraints for children under the

age of 2 who are not sufficiently protected by adult seatbelts on airplanes. I am proud to be an original cosponsor of this legislation.

Mr. President, the life of a U.S. Senator dictates that he or she do a lot of traveling. This entails flying from their home state to Washington, DC, almost every week. Because of this active and busy flying schedule, my colleagues have a strong appreciation for the question of safety as it relates to the airline industry.

I am confident that all of my colleagues would agree that we should do all we can to insure that all airline passengers are safe whenever they fly.

Yet, there is a group of airline passengers who receive no protection in the event of an airline accident or severe air turbulence. They are left defenseless during these tragic incidents. Who are the members of this group that do not receive the same concern for safety that is afforded to everyone else?

Mr. President, I am talking about our children. Infants and toddlers under the age of 2 receive no protection in the event of an airline accident or severe air turbulence. They are allowed to travel in their parents' laps without sufficient restraints. At the same time, their mothers and fathers, their brothers and sisters, must be safely buckled in by a seatbelt before they are allowed to fly.

If there is strong turbulence or an accident, the parents are unable to stop the child from being flung from their arms, causing serious injury or death.

Present FAA regulations are unclear on this issue. If parents attempt to use a child safety seat while flying on an airline, they are either prohibited from doing so or the restrictions are so severe that its use becomes impractical.

The legislation that I am cosponsoring would clear up this confusion and protect passengers under the age of 2. It would require that the Federal Aviation Administration propose rules that would provide for restraints for children under the age of 2 who are not sufficiently protected by adult seatbelts on airplanes. Through testing, the FAA will be able to determine the best type of restraints that would most adequately do the job.

The additional costs required should not be burdensome. Most major airlines permit the free use of a vacant seat for children under the age of 2.

The Air Transport Association estimates that over 95 percent of all flights currently operate at less than full capacity, so vacant seats would be available on many flights. Also, many airlines offer reduced fares for children.

Children riding safely is not an issue that divides us. Everyone supports this idea. But this idea should be broadened to not only include children in cars, or on schoolbuses, or for that matter, on bikes or skateboards. The safe transportation of our Nation's children should be insured in our Nation's airways. I urge my colleagues to support this legislation.

By Mr. MACK:

S. 1878. A bill to amend section 518 of the National Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

AMENDMENT OF THE NATIONAL HOUSING ACT

• Mr. MACK. Mr. President, today I would like to introduce legislation that addresses a very serious situation with respect to Federal Housing Administration [FHA] insured mortgages.

During this past August recess, I had the opportunity to visit with the people at Seville Place, a condominium development in Miami, FL. It's hard for me to imagine a more heart-wrenching situation. Seventy homeowners are presently fighting a legal, financial, and emotional battle which started when they were told by Dade County officials that their homes were structurally unsound and that the county would condemn their homes. Since then, the U.S. Department of Housing and Urban Development [HUD], the Home Owners Warranty Corp. [HOW], county officials, and developers have failed to agree on a settlement for home repairs.

It is inconceivable to me that a property inspected by Dade County during construction, inspected by the Federal Government upon completion, and insured by the FHA could fail to meet county building codes. It is an outrage that all these governmental entities would approve a design of construction that cannot withstand hurricane forces, a clearly foreseeable occurrence in the Miami area.

My legislation would require that FHA guarantees explicitly carry the financial responsibility consistent with what is implied by that insurance role with respect to the structural soundness of federally insured homes. It amends section 518(a) of the National Housing Act. Section 518(a) was established to provide financial assistance to homeowners with HUD-insured mortgages to avert family catastrophe or loss of property caused by structural defects in their home.

Currently, section 518(a) does not apply to condominiums. This is unfair. It is wrong to have Federal mortgage insurance guarantees respond to single family homes and not condominiums. This legislation would extend section 518(a) to condominiums.

When I visited Seville Place in August, it was my belief that some entity or entities have a liability to pay for structural repairs. For the sake of preserving the integrity of Federal mortgage loans and, most importantly, for the sake of fairness to the people of Seville Place, I believe these homeowners are entitled to relief through section 518(a) of the National Housing Act.•

By Mr. DASCHLE:

S. 1879. A bill to authorize the adjustment of the boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest, and for other purposes; to the Committee on Energy and Natural Resources.

ADJUSTMENT OF BOUNDARIES OF THE SIOUX RANGER DISTRICT

• Mr. DASCHLE. Mr. President, I rise today to introduce legislation to authorize the adjustment of the boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest. This legislation is supported by the Custer National Forest and landowners in the area, and I hope it will receive timely consideration in the Senate.

Most land exchanges between private landowners and the Forest Service are authorized in accordance with three existing laws. The one relevant to this legislation is the General Exchange Act of 1922, which allows for exchanges of lands only within the exterior boundaries of national forest lands. The national forest boundary usually lies directly adjacent to federally owned lands, and, as a result, lands that are outside the boundary cannot be exchanged even if they are immediately adjacent to the boundary and forest land. The legislation I am introducing today would enable the Secretary of Agriculture to accept title to any lands located within 5 miles of the exterior boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest.

Over a period of 50 years, a number of boundary extension laws have been passed to allow land exchanges to include lands adjacent to, but outside, national forest boundaries. My legislation would enable the South Dakota portion of the Sioux Ranger District to conduct the kind of land exchanges that the rest of Custer National Forest, and a significant number of other National Forests, are already entitled to conduct.

Land exchanges have been used as a tool by the Forest Service and private landowners to increase the management efficiency of their respective holdings, allow consolidation of property ownership, and resolve Forest Service management issues such as public access and trespass situations. The Sioux Ranger District has two firm and several tentative land exchange proposals from private landowners that involve lands just outside the forest boundary. This general boundary extension is necessary to facilitate these land exchanges.

Mr. President, I urge my colleagues to join me in support of this bill, and ask unanimous consent to have the full text of the bill printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1879

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SIOUX RANGER DISTRICT BOUNDARY ADJUSTMENT.

(a) IN GENERAL.—In accordance with the Act entitled "An Act to consolidate national forest lands", approved March 20, 1922 (16 U.S.C. 485 et seq.), and in exchange for national forest lands in Custer National Forest, the Secretary of Agriculture may accept title to any lands located within 5 miles of the exterior boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest that are not owned by the United States and that are found by the Secretary of Agriculture to be chiefly valuable for national forest purposes.

(b) INCORPORATION INTO CUSTER NATIONAL FOREST.—Upon acceptance of title by the Secretary of Agriculture, lands conveyed to the United States in accordance with subsection (a) shall become part of the Custer National Forest.●

By Mr. LEVIN:

S. 1880. A bill to amend the District of Columbia Spouse Equity Act of 1988; to the Committee on Governmental Affairs.

AMENDMENT TO THE DISTRICT OF COLUMBIA SPOUSE EQUITY ACT

● Mr. LEVIN. Mr. President, today I am introducing legislation which seeks to amend the District of Columbia Spouse Equity Act of 1988 to extend rightful coverage of the benefits of this act to pre-1984 employees of the U.S. Secret Service and the U.S. Park Police and their spouses.

These specific individuals are in a very unique situation which places them directly in a small legislative gap between the provisions of the federally enacted Spouse Equity Act for civil service employees and the District of Columbia Spouse Equity Act which covers employees of the District of Columbia. Both of these acts afford spouses of civil service and District employees, respectively, legal rights with regard to the receipt of annuity benefits. Pre-1984 employees of the U.S. Secret Service and the U.S. Park Police are not covered by either act and, therefore, spouses of these individuals do not have the force of law to uphold any rightful claim they may have with regard to annuity benefits.

This situation arises from the participation of these Federal employees in a D.C. retirement system. This group of Federal civil service employees—for historical reasons—are not covered by the Federal civil service retirement system [CSRS] or the Federal Employees Retirement System [FERS] but by the D.C. Police and Firefighters Retirement and Disability System. This practice, for practical reasons, was discontinued in 1984. Due to their unique situation, these pre-1984 employees are not covered by either spouse equity act. They do not qualify under the Federal Spouse Equity Act because they do not fulfill the requirement that they be annuitants under the CSRS or FERS retirement systems. They do not qualify under the D.C. Spouse Equity Act due to the fact that they do not fulfill the requirement that they be employees of the District of Columbia.

This gap was brought to my attention by a Michigan resident who is a former spouse of an affected Secret Service agent. The lack of coverage by either Spouse Equity Act, makes her legally unable to assert a claim upon, or enforce a decree or property settlement allowing, an annuity share similar to that provided to former spouses under either the Federal or D.C. Spouse Equity Acts. Spouses covered by either of the other two acts are provided a full, legally enforceable entitlement to a spouse's annuity. Spouses of this select group of individuals are left in a tenuous position with regard to any assurance that they will receive benefits to which anyone else in their position is legally entitled.

There are no significant costs associated with my legislation. It would merely amend the D.C. Act to include in the definition of those covered, "officers, members or retirees of the U.S. Park Police or the U.S. Secret Service to whom the D.C. Policemen and Firemen's Retirement and Disability Act applies". The Office of Personnel Management [OPM], the U.S. Secret Service, the U.S. Park Police, and the D.C. Corporation Council all agree with the need for a legislative remedy for this gap and agree that it is appropriate to amend the D.C. Spouse Equity Act to fulfill this goal in that these particular employees are annuitants of a D.C. retirement system.

I ask my colleagues to join me in support of this small but needed change to close this inadvertent gap and provide rightful legal protections to those entitled employees and their spouses.●

By Mr. BENTSEN:

S. 1881. A bill to amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the U.S. International Trade Commission; to the Committee on Finance.

APPOINTMENT OF CHAIRMAN OF THE INTERNATIONAL TRADE COMMISSION

● Mr. BENTSEN. Mr. President, the bill that I am introducing today is designed to establish appropriate procedures for the timely appointment of an experienced Commissioner to serve as Chairman of the International Trade Commission. This legislation has the support of Senator PACKWOOD, the ranking member of the Finance Committee, and of the administration.

There are three elements to the bill. First, the bill modifies the current eligibility requirements to provide that prospective Chairmen must have served at least 1 year on the Commission before being designated Chairman. This requirement would be waived during a transition period. Second, the bill provides a special transition rule for the appointment of the Chairman for the term beginning in 1992. Finally, the bill establishes a procedure for the designation of an interim Chairman until such time as the President appoints a Chairman.

This is important legislation. I expect the House to approve identical legislation in the near future, and it is my hope that the Senate will approve this measure promptly.●

By Mr. FORD:

S. 1882. A bill to authorize extensions of time limitations in a FERC-issued license; to the Committee on Energy and Natural Resources.

EXTENSION OF TIME LIMITATIONS IN A FERC-ISSUED LICENSE

● Mr. FORD. Mr. President, today I am introducing legislation to forestall a threat to the promising development of hydropower at the Smithland Dam on the Ohio River. This project is threatened by an equally good Corps of Engineers' requirement for installation modification at the dam. My legislation affects the existing license and merely postpones the effective date of required construction beginning until the corps project is completed.

On June 30, 1988, the city of Marion, KY, and Smithland Hydroelectric Partners were granted a license by the Federal Energy Regulatory Commission [FERC] to construct the Smithland Lock and Dam Hydro Project No. 6641 at the U.S. Army Corps of Engineers dam on the Ohio River near Paducah, KY. Last year, ASEA Brown Boveri [ABB], a large domestic and international manufacturer of electrical power generation equipment, agreed to sponsor the construction of this project.

Under the terms of the FERC-issued license, construction of project No. 6641 must commence by June 29, 1992. However, as a result of circumstances beyond the control of the licensees, it is impossible to commence construction of the project before the license deadline of June 29, 1992.

In August 1990, the Corps of Engineers informed FERC that it plans to construct and operate a prototype wicket gate test facility in the left—Kentucky—abutment of the Smithland Dam. Subsequent meetings between the licensee and the corps indicated that the two proposed projects were in conflict due to identical sites and construction schedules. On October 4, 1991, the corps advised that its current schedule anticipates construction of its test facility to begin in June 1992, and to continue for approximately 1 year. It must be noted that the corps' plans must prevail as access to the site requires the corps' written permission and approval of the proposed construction schedule for project No. 6641.

Therefore, project No. 6641 is precluded from commencing construction by the license deadline of June 29, 1992.

In light of the above circumstances, it is imperative that the time limitation of the FERC-issued license to commence construction be extended to June 29, 1996. This extension would allow enough time for the corps to complete its test facility and grant project No. 6641 3 years to commence construction.

The extension of the time limit to commence construction of the Smithland Lock and Dam Hydro Project No. 6641 is in the public interest. The license for project No. 6641 was issued in June 1988, after many years of environmental and engineering studies. More than $1 million has already been expended by the licensee and its sponsor on project No. 6641. To start anew for a new license will cost countless millions of dollars and a loss of the efforts and money already expended by many Federal, State, and local agencies.

Project No. 6641 will be financed solely by private funds and will cost approximately $150 million. During its 3-year construction period, it will directly employ between 150 and 300 people and an equal number of project-related jobs should be created in the surrounding Livingston-Smithland-Paducah area. When completed, the annual local and State property taxes will be in excess of $400,000. In addition, the licensee of project No. 6641 will most likely be required to pay approximately $850,000 to the Federal Government for use of the dam. When completed, project No. 6641 will produce 460 million kilowatthours of electricity—enough to light 46,000 homes and will displace 267,000 barrels of imported oil. In addition, it will make a major contribution to the areas of recreational and fishing facilities.

Mr. President, I ask unanimous consent that the short text of the bill be placed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1882

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the license for FERC Project No. 6641 (and after reasonable notice) is authorized, in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend until June 29, 1996, the time required for the licensee to acquire the required real property and commence the construction of Project No. 6641, and until June 29, 2000, the time required for completion of construction of such project.

The authorization for issuing extensions under this Act shall terminate on June 29, 1996.•

By Mr. JOHNSTON (by request):

S.J. Res. 219. Joint resolution to approve the location of a memorial to George Mason; to the Committee on Energy and Natural Resources.

APPROVAL OF A LOCATION OF A MEMORIAL TO GEORGE MASON

• Mr. JOHNSTON. Mr. President, at the request of the Department of the Interior, I send to the desk a joint resolution approving the location of a memorial to George Mason.

Mr. President, this draft legislation was submitted and recommended by the Department of the Interior, and I ask unanimous consent that the joint resolution, and the communication which accompanied the proposal from the Secretary be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S.J. RES. 219

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Whereas section 6(a) of the Act entitled "To provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes", approved November 14, 1986 (100 Stat. 3650), provides that the location of a commemorative work in the area described therein as Area I shall be deemed disapproved unless the location is approved by law not later than 150 days after the Secretary of the Interior or the Administrator of General Services notifies the Congress of his determination that the commemorative work should be located in Area I; and

Whereas the Act approved August 10, 1990 (104 Stat. 419), authorizes the Board of Regents of Gunston Hall to establish a memorial on Federal land in the District of Columbia to honor George Mason; and

Whereas the Secretary of the Interior has notified the Congress of his determination that the memorial authorized by the said Act approved August 10, 1990, should be located in Area I; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the location of a memorial to honor George Mason, authorized by the Act approved August 10, 1990 (104 Stat. 419), within Area I as described in the Act approved November 14, 1986 (100 Stat. 3650), is hereby approved.

THE SECRETARY OF THE INTERIOR,
Washington, DC, October 10, 1991.

Hon. J. DANFORTH QUAYLE,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: There is enclosed a draft joint resolution, "Approving the location of a memorial to George Mason."

We recommend that the joint resolution be introduced, referred to the appropriate committee for consideration, and enacted.

The draft joint resolution would approve the location of a memorial to George Mason in Area I, the area comprising the central monumental core of the District of Columbia as defined by Public Law 99-652 (November 14, 1986; 100 Stat. 3650; hereinafter referred to as "the Act".)

Public Law 101-358 (August 10, 1990, 104 Stat. 419) authorized the Board of Regents of Gunston Hall to establish a memorial on Federal land in the District of Columbia to honor George Mason. This memorial will honor an individual widely recognized for his role in the events surrounding the drafting of the U.S. Constitution and the Bill of Rights. George Mason's participation in the drafting of the Virginia Constitution and the Virginia Declaration of Rights, the first statement of individual rights adopted by an elected assembly in history, greatly influenced the development of the U.S. Constitution. He had a profound impact on the Constitution's authors, his compatriots, and through this historic document's guarantee of basic freedoms, his effect on all Americans has continued through history.

The Board of Regents has proposed that the memorial be located in Area I. Section 6(a) of the Act provides that the Secretary of the Interior (the Secretary) may approve the location of a commemorative work in Area I only if he finds that the subject of the work is of pre-eminent historical and lasting significance to the Nation. That section further provides that the Secretary, after consultation with the National Capital Memorial Commission, shall notify the Congress of his determination that a commemorative work should be located in Area I; and the location in Area I shall be deemed disapproved unless within 150 days of the notification it is approved by law by the Congress.

On November 8, 1990, the National Capital Memorial Commission recommended that the memorial to George Mason be located in Area I. I find the subject to be of pre-eminent historical and lasting significance to the Nation, and I have determined that the memorial to George Mason should be located in Area I.

In accordance with section 6(a) of the Act approved November 14, 1986 (100 Stat. 3650), notice is hereby given that I have approved the location of this proposed memorial in Area I, that through my designee I have consulted with the National Capital Memorial Commission, and that I have determined that the memorial to George Mason should be located in Area I. Under section 6(a) of the Act, the location in Area I should be deemed disapproved unless, not later than 150 days after this notification, the location is approved by law. Therefore, we urge prompt action on this joint resolution.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

MANUEL LUJAN, Jr.•

By Mr. MITCHELL (for himself and Mr. COHEN):

S.J. Res. 220. Joint resolution to designate the Provasoli-Guillard Center for the Culture of Marine Phytoplankton as a National Center and Facility; to the Committee on Commerce, Science, and Transportation.

DESIGNATION OF PROVASOLI-GUILLARD CENTER FOR THE CULTURE OF MARINE PHYTOPLANKTON AS A NATIONAL CENTER AND FACILITY

Mr. MITCHELL. Mr. President, today I am introducing with Senator COHEN a joint resolution to designate the Provasoli-Guillard Center for the Culture of Marine Phytoplankton at the Bigelow Laboratory in West Boothbay Harbor, ME, as a national center and facility.

The Bigelow Laboratory makes an important contribution to research of

the marine environment in the Gulf of Maine and in other parts of the world. The Provasoli-Guillard Center is one of the most outstanding elements of the laboratory. This resolution provides well-earned recognition to the Center and confirms its place as a leader in the study of marine phytoplankton.

Over 70 percent of the surface of the earth is covered by oceans and these waters are a global resource of immense value and importance.

Unfortunately, threats to this vital resource are growing. In the past several years, there has been severe deterioration in the quality of near-shore marine waters. Beach closings are increasingly common. Scientists have identified a large dead zone in the Gulf of Mexico. According to reports by the Office of Technology Assessment, many of our marine waters are "declining or threatened".

Phytoplankton are a vital natural resource of the oceans. These microscopic plants are the foundation of the food webs and fisheries productivity. There is evidence that phytoplankton serve as agents in controlling the flux of atmospheric carbon dioxide to the deep ocean and thereby influence global climate change.

Despite the importance of these organisms, there is limited understanding of their biology, physiology, chemistry, and taxonomy. Gathering and evaluating information about phytoplankton will enhance our understanding of marine resources in our country and throughout the world.

The Provasoli-Guillard Center contains the largest collection of marine phytoplankton in the world. The Center fills a vital role in providing samples of phytoplankton to researchers around the world.

Mr. President, it is impossible to know how we will be judged by future generations. We may, however, be judged by how well we recognized the importance of the oceans in supporting life on earth and how well we used our knowledge of the marine environment.

I hope my colleagues will join me in recognizing the value of the Provasoli-Guillard Center to marine research throughout the world by supporting the designation of the Center as a national center and facility.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD as follows:

S.J. RES. 220

Whereas the oceans cover 70 per cent of the surface of the Earth;

Whereas the foundation of the food webs and fisheries productivity of the oceans rests with microscopic plants known as phytoplankton;

Whereas phytoplankton serve as a vital natural resource in the oceans;

Whereas by serving as primary agents in the control of the flux of atmospheric carbon dioxide to the deep ocean, phytoplankton influence climate and the rate of global warming;

Whereas there is limited knowledge of the biology, physiology, chemistry, and taxonomy of phytoplankton, and it is of vital interest to this Nation to improve the body of knowledge relating to phytoplankton to benefit this Nation and other countries;

Whereas the Provasoli-Guillard Center for the Culture of Marine Phytoplankton located in West Boothbay Harbor, Maine, houses a phytoplankton collection that contains species from each of the ocean environments of the World, and is recognized as the largest collection of phytoplankton in the World;

Whereas the Provasoli-Guillard Center for the Culture of Marine Phytoplankton is of vital interest to oceanographers in this Nation and throughout the World, and provides cultures of phytoplankton for critical research on global issues. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, because of the value and importance of the Provasoli-Guillard Center for the Culture of Marine Phytoplankton located in West Boothbay Harbor, Maine, to the ocean research interests of this Nation, the Provasoli-Guillard Center for the Culture of Marine Phytoplankton is designated as a National Center and Facility.

Mr. COHEN. Mr. President, I am pleased to join my distinguished fellow Senator from Maine in introducing this joint resolution designating the Provasoli-Guillard Center for the Culture of Marine Phytoplankton as a national center and facility.

As an important natural resource, phytoplankton greatly affect our planet's climate and the rate of global warming by controlling the transfer of atmospheric carbon dioxide to the depths of the oceans.

Phytoplankton also represent the foundation of the food chain in the oceans. Populations of fish depend heavily upon this tiny, yet crucial organism. More thorough knowledge of this vital resource will greatly benefit our understanding of marine ecosystems.

The Provasoli-Guillard Center, located in West Boothbay Harbor, ME, houses the largest phytoplankton collection in the world, containing specimens of phytoplankton from every ocean environment. Dedicated to studying the biology, chemistry, and physiology of phytoplankton, the center will certainly expand our current knowledge of phytoplankton. For these reasons, I strongly support this resolution and look forward to its adoption.

ADDITIONAL COSPONSORS

S. 4

At the request of Mr. BENTSEN, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 4, a bill to amend titles IV, V, and XIX of the Social Security Act to establish innovative child welfare and family support services in order to strengthen families and avoid placement in foster care, to promote the development of comprehensive substance abuse programs for pregnant women and caretaker relatives with children, to provide improved delivery of health care services to low-income children, and for other purposes.

S. 139

At the request of Mr. DASCHLE, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 139, a bill to amend the Internal Revenue Code to make permanent, and to increase to 100 percent, the deduction of self-employed individuals for health insurance costs.

S. 168

At the request of Mr. CONRAD, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from South Dakota [Mr. DASCHLE], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 168, a bill to implement certain recommendations of the Garrison Unit Joint Tribal Advisory Committee regarding the entitlement of the Three Affiliated Tribes and the Rock Sioux Tribe to additional financial compensation for the taking of reservation lands for the site of the Garrison Dam and Reservoir and the Oahe Dam and Reservoir, and for other purposes.

S. 196

At the request of Mr. COATS, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 196, a bill to grant the power to the President to reduce budget authority.

S. 701

At the request of Mr. COATS, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 701, a bill to amend the Internal Revenue Code of 1986 to increase the amount of the exemption for dependent children under age 18 to $3,500, and for other purposes.

S. 879

At the request of Mr. DASCHLE, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 879, a bill to amend the Internal Revenue Code of 1986 to clarify the treatment of certain amounts received by a cooperative telephone company indirectly from its members.

S. 958

At the request of Mr. THURMOND, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 958, a bill to amend title 32, United States Code, to authorize Federal support of State defense forces.

S. 972

At the request of Mr. BRADLEY, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 972, a bill to amend the Social Security Act to add a new title under such act to provide assistance to States in providing services to support

informal caregivers of individuals with functional limitations.

S. 1179

At the request of Mr. JOHNSTON, the names of the Senator from Maine [Mr. COHEN], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 1179, a bill to stimulate the production of geologic-map information in the United States through the cooperation of Federal, State, and academic participants.

S. 1231

At the request of Mr. BENTSEN, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 1231, a bill to amend title XVIII of the Social Security Act to provide for coverage of colorectal screening examinations and certain immunizations under part B of the Medicare Program, and for other purposes.

S. 1357

At the request of Mr. BREAUX, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 1357, a bill to amend the Internal Revenue Code of 1986 to permanently extend the treatment of certain qualified small issue bonds.

S. 1381

At the request of Mr. GRAHAM, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1381, a bill to amend chapter 71 of title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive military retired pay concurrently with disability compensation.

S. 1498

At the request of Mr. BREAUX, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1498, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of businesses within Federal military installations which are closed or realigned and for the hiring of individuals laid off by reason of such closings or realignments, and for other purposes.

S. 1599

At the request of Mr. BRADLEY, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1599, a bill to extend nondiscriminatory (most-favored-nation) treatment to Estonia, Latvia, and Lithuania.

S. 1647

At the request of Mr. BAUCUS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1647, a bill to amend the Internal Revenue Code of 1986 to provide that the deduction for State and local income and franchise taxes shall not be allocated to foreign source income.

S. 1675

At the request of Mr. EXON, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 1675, a bill to amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and household goods freight forwarders, and other purposes.

S. 1738

At the request of Mr. DASCHLE, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1738, a bill to prohibit imports into the United States of meat products from the European Community until certain unfair trade barriers are removed, and for other purposes.

S. 1748

At the request of Mr. BAUCUS, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1748, a bill to amend various provisions of the Internal Revenue Code of 1986 relating to the taxation of regulated investment companies.

S. 1786

At the request of Mr. BAUCUS, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 1786, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of semiconductor manufacturing equipment.

S. 1810

At the request of Mr. ROCKEFELLER, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1810, a bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the medicare program, and for other purposes.

S. 1829

At the request of Mr. D'AMATO, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 1829, a bill to expand the exclusion of service of election officials or election workers from social security coverage.

S. 1830

At the request of Mr. WOFFORD, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1830, a bill to require Senators and Members of the House of Representatives to pay for medical services provided by the Office of the Attending Physician, and for other purposes.

SENATE JOINT RESOLUTION 136

At the request of Mr. RIEGLE, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Joint Resolution 136, a joint resolution to authorize the display of the POW-MIA flag on flagstaffs at the national cemeteries of the United States, and for other purposes.

SENATE JOINT RESOLUTION 166

At the request of Mrs. KASSEBAUM, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Joint Resolution 166, a joint resolution designating the week of October 6 through 12, 1991, as "National Customer Service Week."

SENATE JOINT RESOLUTION 210

At the request of Mrs. KASSEBAUM, the names of the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Idaho [Mr. CRAIG], the Senator from Connecticut [Mr. DODD], the Senator from Iowa [Mr. GRASSLEY], the Senator from Ohio [Mr. METZENBAUM], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Colorado [Mr. BROWN], the Senator from Mississippi [Mr. COCHRAN], the Senator from Louisiana [Mr. BREAUX], the Senator from Alaska [Mr. STEVENS], the Senator from California [Mr. SEYMOUR], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Hawaii [Mr. INOUYE], the Senator from Oregon [Mr. HATFIELD], and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of Senate Joint Resolution 210, a joint resolution to designate March 12, 1992, as "Girl Scouts of the United States of America 80th Anniversary Day."

SENATE JOINT RESOLUTION 211

At the request of Mr. D'AMATO, the names of the Senator from Tennessee [Mr. GORE], the Senator from Hawaii [Mr. INOUYE], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of Senate Joint Resolution 211, a joint resolution designating October 1991 as "Italian-American Heritage and Culture Month."

SENATE CONCURRENT RESOLUTION 68

At the request of Mr. HATFIELD, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of Senate Concurrent Resolution 68, a concurrent resolution expressing the sense of the Congress relating to encouraging the use of paid leave by working parents for the purpose of attending parent-teacher conferences.

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the names of the Senator from Washington [Mr. ADAMS], and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE RESOLUTION 201

At the request of Mr. DANFORTH, the names of the Senator from Delaware [Mr. ROTH], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of Senate Resolution 201, a resolution to express the sense of the Senate regarding enforcement of the oilseeds GATT panel ruling against the European Community.

SENATE RESOLUTION 204

At the request of Mr. D'AMATO, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a co-

sponsor of Senate Resolution 204, a resolution expressing the sense of the Senate that the United States should pursue discussions at the upcoming Middle East Peace Conference regarding the Syrian connection to terrorism.

SENATE RESOLUTION 207—REGARDING THE RECOMMENDATIONS OF THE UNITED NATIONS STUDY GROUP ON INTERNATIONAL ARMS SALES

Mr. ROTH submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 207

Whereas increased information and openness in the international arms trade would promote greater control and monitoring of arms transfers and would reduce the likelihood of uncontrolled arms buildups;

Whereas the United Nations Study Group on Ways and Means of Promoting Transparency in International Sales of Conventional Arms recently issued a set of final recommendations for promoting the sharing of information about international arms transfers;

Whereas these recommendations included creation of an international arms registry and compilation of information on national arms export control regimes;

Whereas the United States has one of the highest levels of disclosure of information regarding its international arms sales;

Whereas creation of an arms registry would encourage other nations to raise their levels of disclosure of information to those of the United States; and

Whereas the United States participation in an arms registry would not conflict with existing United States export control and disclosure regulations: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the conclusions and final recommendations of the United Nations Study Group on Ways and Means of Promoting Transparency in International Arms Sales should be welcomed, and the United Nations General Assembly should be urged to approve these;

(2) an international arms registry should be created under the auspices of the United Nations; and

(3) information on national arms export laws or arms trading nations be compiled to serve as a basis for future multilateral harmonization of export control regimes.

• Mr. ROTH. Mr. President, in June the Permanent Subcommittee on Investigations, on which I serve as ranking minority member, held the third in a series of hearings on the international arms trade. At the time of this hearing, there was great concern about the need to control arms trafficking. The United States and its allies had just come out of a war with Iraq, and there existed a consensus that steps had to be taken in order to prevent a recurrence of the arms buildup which made this war necessary.

This consensus still exists and has been reinforced by recent events in Iraq. Yet, consensus alone will not achieve results. We must use the momentum which it creates to achieve greater control of the arms market. The final destinations of powerful and lethal conventional weapons cannot be left to chance.

One focus of the hearing in June was the dearth of public information available concerning the international arms trade. The subcommittee heard testimony from several witnesses about the need to remedy this situation and about the desirability of establishing an arms registry as a first step toward achieving greater openness and transparency in the global arms market.

I have been actively working to promote the concept of an arms registry, and to increase our knowledge of the workings of the arms market—our knowledge both of licit transfers as well as of the workings of the black and gray arms market. As an example of my concern, I recently met with a group of Senators from Italy who are investigating the Banca Nazionale del Lavoro affair and the role which this bank may have played in financing arms deals to the Middle East. Through this and similar contacts, I hope to strengthen the multilateral cooperation and information sharing which are crucial elements for the success of our efforts in controlling the arms market.

Today I am submitting a resolution endorsing the recently released recommendations of the U.N. Study Group on Ways and Means of Promoting Transparency in International Arms Transfers. The most significant of these recommendations calls for the establishment of an international arms registry under the auspices of the United Nations. The study group has been meeting over the past 2 years to determine how best to bring greater openness to the international arms market, and its recommendations represent the consensus of representatives from roughly 20 nations. In addition to an arms registry, the study group recommends that information about the national arms export control regimes of the world's arms trading nations be compiled as a first step toward enhancing international harmonization of export controls.

I call upon my colleagues to join me in supporting these important goals. An arms registry is not the final step, but it is a first step, and it is a significant step. It will provide arms trading nations information around which to begin to build cooperative trading behavior, and it will increase the amount of information which is publicly available regarding global arms transfers.

The arms registry proposal and the other recommendations of the study group must still be ratified by all the nations of the U.N. General Assembly. With united support of the United States and its allies, those working to secure this ratification and to establish the registry can achieve success. Without this support, it is likely that they will fail. The United States is already one of the most open of all arms exporters, and American participation in a U.N. arms registry would entail no changes in current U.S. law. As one of the world's leading arms exporters, the United States cannot shirk its responsibility to export in an accountable and controlled manner, nor can it neglect its equally important responsibility to exercise leadership to ensure that other nations follow this lead.

An international arms registry is a step toward realization of these goals. The concept of a registry has already been endorsed by President Bush, as well as by Britian's Prime Minister Major, Japan's Prime Minister Kaifu, and by other leaders of the world's major arms exporting nations. It warrants our endorsement as well.

I urge your support for this resolution.•

SENATE RESOLUTION 208—MAKING FUNDS AVAILABLE FOR THE ALBERT EINSTEIN CONGRESSIONAL FELLOWSHIP PROGRAM

Mr. DOLE (for Mr. HATFIELD) submitted the following resolution; which was considered and agreed to:

S. RES. 208

Resolved, That section 4 of the resolution entitled "A resolution to establish an Albert Einstein Congressional Fellowship Program", approved August 2, 1991, is amended by adding at the end the following new subsection:

"(c) AVAILABILITY.—The funds made available under subsection (a) for fiscal year 1991 shall remain available through September 30, 1992.".

AMENDMENTS SUBMITTED

CIVIL RIGHTS ACT OF 1991

DANFORTH (AND OTHERS) AMENDMENT NO. 1274

Mr. DANFORTH (for himself, Mr. KENNEDY, Mr. DOLE, Mr. MITCHELL, Mr. HATCH, Mr. THURMOND, Mr. CHAFEE, Mr. COHEN, Mr. DURENBERGER, Mr. HATFIELD, Mr. JEFFORDS, Mr. SPECTER, Mr. DIXON, Mr. BOND, Mr. DODD, Mr. D'AMATO, Mr. EXON, Mr. DOMENICI, Mr. GRAHAM, Mr. GARN, Mr. LEVIN, Mr. GORTON, Mr. LIEBERMAN, Mrs. KASSEBAUM, Mr. PELL, Mr. MCCAIN, Mr. ROBB, Mr. MURKOWSKI, Mr. ROTH, Mr. RUDMAN, Mr. SEYMOUR, Mr. SIMPSON, Mr. STEVENS, Mr. WARNER, and Mr. LEAHY) proposed an amendment to the bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

SEC. 4. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.".

SEC. 5. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.—

"(1) CIVIL RIGHTS.—In an action brought by a complaining party under section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703 or 704 of the Act (42 U.S.C. 2000e–2 or 2000e–3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(2) DISABILITY.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 102 of the Act (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(3) REASONABLE ACCOMMODATION AND GOOD FAITH EFFORT.—In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

"(b) COMPENSATORY AND PUNITIVE DAMAGES.—

"(1) DETERMINATION OF PUNITIVE DAMAGES.—A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES.—Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.—The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed—

"(A) in the case of a respondent who has more than 15 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

"(4) CONSTRUCTION.—Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

"(c) JURY TRIAL.—If a complaining party seeks compensatory or punitive damages under this section—

"(1) any party may demand a trial by jury; and

"(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

"(d) DEFINITIONS.—As used in this section:

"(1) COMPLAINING PARTY.—The term 'complaining party' means—

"(A) in the case of a person seeking to bring an action under subsection (a)(1), a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

"(B) in the case of a person seeking to bring an action under subsection (a)(2), a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(2) DISCRIMINATORY PRACTICE.—The term 'discriminatory practice' means the discrimination described in paragraph (1), or the disparate treatment or the violation described in paragraph (2), of subsection (a).

SEC. 6. ATTORNEY'S FEES.

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting ", 1981A" after "1981".

SEC. 7. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 717.".

SEC. 8. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by adding at the end the following new subsection:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—

"(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

"(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

"(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

"(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of 'alternative business practice'.

"(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.".

SEC. 9. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by section 8) is further amended by adding at the end the following new subsection:

"(l) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.".

SEC. 10. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by sections 8 and 9) is further amended by adding at the end the following new subsection:

"(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e-5(g)) is amended—

(1) by designating the first through third sentences as paragraph (1);

(2) by designating the fourth sentence as paragraph (2)(A) and indenting accordingly; and

(3) by adding at the end the following new subparagraph:

"(B) On a claim in which an individual proves a violation under section 703(m) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

"(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under this section 703(m) and

"(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).".

SEC. 11. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by sections 8, 9, and 10 of this Act) is further amended by adding at the end the following new subsection:

"(n)(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

"(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

"(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

"(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

"(II) a reasonable opportunity to present objections to such judgment or order; or

"(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

"(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

"(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 12. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) DEFINITION OF EMPLOYEE.—Section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) and section 101(4) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(4)) are each amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.".

(b) EXEMPTION.—

(1) CIVIL RIGHTS ACT OF 1964.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) is amended—

(A) by inserting "(a)" after "SEC. 702."; and

(B) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

"(c)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Sections 703 and 704 shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

"(A) the interrelation of operations;

"(B) the common management;

"(C) the centralized control of labor relations; and

"(D) the common ownership or financial control,

of the employer and the corporation.".

(2) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) COVERED ENTITIES IN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

"(2) CONTROL OF CORPORATION.—

"(A) PRESUMPTION.—If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(B) EXCEPTION.—This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(C) DETERMINATION.—For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control,

of the employer and the corporation.".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

SEC. 13. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraph:

"(2) In exercising its powers under this title, the Commission shall carry out edu-

cational and outreach activities (including dissemination of information in languages other than English) targeted to—

"(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

"(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this title or such law, as the case may be.".

SEC. 14. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(e)) is amended—

(1) by inserting "(1)" before "A charge under this section"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.".

SEC. 15. AUTHORIZING AWARD OF EXPERT FEES.

(a) REVISED STATUTES.—Section 722 of the Revised Statutes is amended—

(1) by designating the first and second sentences as subsections (a) and (b), respectively, and indenting accordingly; and

(2) by adding at the end the following new subsection:

"(c) In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1977 of the Revised Statutes, the court, in its discretion, may include expert fees as part of the attorney's fee.".

(b) CIVIL RIGHTS ACT OF 1964.—Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)) is amended by inserting "(including expert fees)" after "attorney's fee".

SEC. 16. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (c), by striking "thirty days" and inserting "90 days"; and

(2) in subsection (d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.".

SEC. 17. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking paragraph (2);

(2) by striking the paragraph designation in paragraph (1);

(3) by striking "Sections 6 and" and inserting "Section"; and

(4) by adding at the end the following:

"If a charge filed with the Commission under this Act is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 11(a) against the respondent named in the charge within 90 days after the date of the receipt of such notice.".

SEC. 18. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this Act shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

SEC. 19. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) COMMITMENT TO RULE XLII.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment,

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(2) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this Act, the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(3) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to Senate Resolution 338, Eighty-eighth Congress, as amended, or such other entity as the Senate may designate.

(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under the Americans with Disabilities Act of 1990 shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) PROPOSED REMEDIES AND PROCEDURES.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(7) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraphs (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraphs (1), (3), (4), (5), (6)(B), and (6)(C) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988), as incorporated into the Rules of the House of Representatives of the One Hundred Second Congress as Rule LI, or any other provision that continues in effect the provisions of such resolution.

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this Act and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for

individuals protected under section 717 of title VII for the Civil Rights Act of 1964 (42 U.S.C. 2000e–16).

SEC. 20. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this Act.

SEC. 21. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 22. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

(b) CERTAIN DISPARATE IMPACT CASES.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983.

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee will hold a full committee hearing to examine the small business credit crunch problem. The hearing will be chaired by Senator LIEBERMAN and will take place on Wednesday, October 30, 1991, at 9 a.m., in room 428A of the Russell Senate Office Building. For further information, please call Ken Glueck or Senator LIEBERMAN's staff at 224–4041.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a markup on Tuesday, October 29, 1991, beginning at 9:45 a.m., in 485 Russell Senate Office Building on S. 168, the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act and S. 754, to provide that a portion of the income derived from trust or restricted land held by an individual Indian shall not be considered as a resource or income in determining eligibility for assistance under any Federal or federally assisted program, to be followed immediately by a joint hearing with the House Interior Committee on H.R. 1476 and S. 1869, the San Carlos Indian Irrigation Project Divestiture Act of 1991.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224–2251.

Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on October 29, 1991, beginning at 9:45 a.m., in 485 Russell Senate Office Building, to consider for report to the Senate S. 168, the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act and S. 754, to provide that a portion of the income derived from trust or restricted land held by an individual Indian shall not be considered as a resource or income in determining eligibility for assistance under any Federal or federally assisted program, and to meet on H.R. 1476 and S. 1869, the San Carlos Indian Irrigation Project Divestiture Act of 1991.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, November 7, 1991, beginning at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills:

S. 461, to amend the Wild and Scenic Rivers Act of 1968 by designating segments of the Lamprey River in the State of New Hampshire for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes;

S. 606, to amend the Wild and Scenic Rivers Act by designating certain segments of the Allegheny River in the Commonwealth of Pennsylvania as a component of the National Wild and Scenic Rivers System, and for other purposes;

S. 1230 and H.R. 990, to authorize additional appropriations for land acquisition at Monocacy National Battlefield, Maryland;

S. 1552, to amend the Wild and Scenic Rivers Act by designating the White Clay Creek in Delaware and Pennsylvania for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes;

S. 1660, to amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes; and

S. 1772 and H.R. 2370, to alter the boundaries of the Stones River National Battlefield, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, 364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact David Brooks of the subcommittee staff at (202) 224–9863.

AUTHORIZATION FOR COMMITTEES TO MEET

SUBCOMMITTEE ON TERRORISM, NARCOTICS, AND INTERNATIONAL OPERATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Narcotics and International Operations of the Foreign Relations Committee be authorized to meet during the session of the Senate on Friday, October 25, at 10 a.m. to hold a hearing on the narcotics and foreign policy implications of the BCCI affair.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON INTERNATIONAL TRADE

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on International Trade of the Committee on Finance be authorized to meet during the session of the Senate on October 25, 1991 at 10 a.m. to hold a hearing on how trade policy may affect the environment.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. FORD. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on the nominations of Allen Clark to be Director of the VA National Cemetery System, James Endicott to be VA General Counsel, and Jo Ann Webb to be Assistant Secretary for Policy and Planning, on Friday, October 25, 1991, at 9:30 a.m. in SR–418.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Friday, October 25, 1991 at 9:45 a.m. to conduct a hearing on the nominations of Susan Philips, to be a member of the Board of Governors of the Federal Reserve System; and David Bradford and Paul Wonnacott to be members of the Council of Economic Advisers.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Tuesday, October 29, 1991 at 10 a.m. to conduct a hearing on issues related to multifamily housing finance.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

COMMENDING MS. JILL SLATER AND HER COLLEAGUES

• Mr. GORE. Mr. President, as American men and women reflect on the testimony of Prof. Anita Hill during the Clarence Thomas confirmation hearings, many women from across the country have come forward with their own stories of sexual harassment in the workplace. Professor Hill's testimony has given many women the courage not only to admit they have been harassed but also to confront the perpetrators of the harassment. Luckily, the American workplace will never be the same. Men and women everywhere—in offices, in factories, in schools, in banks—are talking about sexual harassment; and hopefully this dialog will result in the end of sexual harassment in the workplace and more professional relationships between men and women who work together.

I have been deeply moved by the stories of women who have written to me from Tennessee and from across the country, telling me about their own experiences with sexual harassment, believing their jobs to be threatened by refusing unwanted personal attention from professional colleagues. They understand Anita Hill. They have been there.

In particular, Mr. President, I want to recognize Jill Slater, a partner in the Los Angeles office of Latham & Watkins, and 156 of her colleagues—all women attorneys—who wrote to say that based on their experiences in law firms, in corporations, and in law schools, the experiences related by Professor Hill do not make her unique among women lawyers. They wrote.

In the course of our careers, many of us have endured incidents of sexual harassment which were depressing and demeaning. All of us have known of such incidents occurring to others. These incidents range from offensive verbal comments to physical molestation.

Indeed, it is not uncommon for cordial professional relationships to be maintained with those engaged in sexual harassment, sometimes because the behavior ceased or because individuals changed jobs, or because it was necessary or prudent to do so for legitimate career advancement reasons.

I want to commend Ms. Slater and her colleagues for coming forward to respond to criticism of Prof. Anita Hill's testimony. I appreciate the courage it takes to publicly discuss these personal issues in a political arena. Their letter underscores how serious sexual harassment is in the American workplace and how widespread it has become.

Mr. President, I ask that the names of Ms. Slater and her colleagues be printed in the RECORD.

The material follows:

Jill S. Slater, Los Angeles; Kim M. Wardlaw, Los Angeles; Sally Suchi, Culver City; Joan M. Graff, San Francisco; Patricia A. Shiu, San Francisco; Sharon Y. Bowen, New York City; Maryanne LaGuardia, Los Angeles; Cecilia Loving-Sloane, New York City; Elsie A. Crum, New York City; Theresa A. Cerozoia, New York City; and Martha C. Reps, Denver.

Barbara A. Reeves, Los Angeles; Robin Shaffert, Washington, DC; Linda K. Sherwood, Los Angeles; Patricia Phillips, Los Angeles; Rose Octri, Los Angeles; Marjorie S. Steinberg, Los Angeles; Ellen R. Marshall, Irvin; Vilma S. Martinez, Los Angeles; Beth S. Dorris, Los Angeles; Elizabeth Schwartz, Los Angeles; Karen S. Bryan, Los Angeles.

Louis A. LaMothe, Los Angeles; Margot Metzner, Los Angeles; Pauline Levy, Los Angeles; Margaret W. Clayton, Los Angeles; Beth R. Neckman, New York City; Mary D. Nichols, Los Angeles; Diann H. Kim, Los Angeles; Karen Kaplowitz, Los Angeles; Judith Ilene Bloom, Los Angeles; Lynne Darcy, New York City; Dale S. Fischer, Los Angeles.

Elizabeth S. Trussell, Los Angeles; Rita J. Miller, Los Angeles; Erica H. Steinberger, New York City; Mary Elizabeth Tom, New York City; Deborah S. Feinerman, Los Angeles; Hadassa K. Gilbert, Los Angeles; Maria Angeletti, Culver City; Jill Lerner, Culver City; Joan L. Lesser, Los Angeles; Carole E. Handler, Los Angeles; Rena M. Wheaton, Los Angeles; Linda M. Inscoe, San Francisco; Lynne Carmichael, San Francisco.

Mary K. Westbrook, Costa Mesa; Donna J. Zenor, Los Angeles; Carol A. Klauschie, Los Angeles; Timi Anyon Hallem, Los Angeles; Maria Gil de Lamadrid, San Francisco; Liz Hendrickson, San Francisco; Maria Blanco, San Francisco; Rose Fang, San Francisco; Nancy L. Davis, San Francisco; Judith E. Kurtz, San Francisco; Billie Pirner Garde, Houston; Laurie F. Hasencamp, Los Angeles; Valerie Merritt, Los Angeles.

Ruth E. Fisher, Los Angeles; Dorothy B. Symons, New York City; Barbara Mendel Mayden, New York City; Erica B. Grubb, Walnut Creek; Pamela Reed, Walnut Creek; Kathy J. Bagdonas, Walnut Creek; E. Jean Gary, Los Angeles; Audrey Winograde, Santa Monica; Ruth McCreight, San Rafael; Mauna Berkov, San Rafael; Joy Oliver, San Rafael; Ellen Rothman, San Rafael; Barbara Kelley, Los Angeles.

Andra Barmach Greene, Newport Beach; Ruth N. Borenstein, San Francisco; Rochelle D. Alpert, San Francisco; Annette P. Carnegie, San Francisco; Kathleen V. Fisher, San Francisco; Joanne M. Hoeper, San Francisco; Nancy J. Koch, San Francisco; Rachel Krevans, San Francisco; Elizabeth J. Kuczynski, San Francisco; Linda E. Shostak, San Francisco; Deborah L. Smith, San Francisco; Janice L. Sperow, San Francisco; Suzanne Toller, San Francisco.

Monique van Yzerlooy, San Francisco; Paula J. Morency, Chicago; Elayne Berg-Wilson, Glendale; Debre Katz Weintraub, Los Angeles; Sheri Young, Chicago; Geraldine M. Alexis, Chicago; Sherry A. Quirk, Washington, D.C.; Frances C. DeLarentis, Washington, D.C.; Karen Fairbank Friedman, Pacific Palisades; Marcie Goldstein, New York City; Polly Horn, Los Angeles; Lisa S. Kantor, Los Angeles; Maren Christensen, Beverly Hills.

Lori E. Simon, Chicago; Patricia Dondanville, Chicago; Kathleen A. Adamick, Chicago; Nancy K. Bellis, Chicago; Andrea E. Friedman, Chicago; Ann Rae Heitland, Chicago; Barbara E. Hermansen, Chicago; Carrie J. Hightman, Chicago; Linda Jeffries, Chicago; Rebecca Lauer, Chicago; Patricia L. Levy, Chicago; Eileen S. Silvers, New York City; Joan Patsy Ostroy, Los Angeles.

Marilee C. Uriah, Chicago; Kachen Kimmeff, Chicago; Carole Randolph, Chicago; Sahar Stegemoeller, Chicago; Kathleen Johnson, Chicago; Rose C. Chan, Los Angeles; Lucinda Starrett, Los Angeles; Jenniffer Belt Duchene, Cleveland; Susan B. Coffins, Cleveland; Wendy Jacobsen, Cleveland; Sydney Bennion, Los Angeles; Beth Cranston, Los Angeles; Carla Harnre, Los Angeles.

Sara Reynolds, Los Angeles; Pauline Stevens, Los Angeles; Lisa Yano, Los Angeles; Laurie Zolon, Los Angeles; Susan Thorner, San Francisco; Deborah C. Paskin, Chicago; Patricia A. Ahmann, Los Angeles; Alison M. Whalen, Los Angeles; Janet Koran, Chicago; Marjorie Press Lindblom, Chicago; Marion B. Adler, Chicago; Vicki V. Hood, Chicago; Jiff L. Sugar, Chicago.

Maryann A. Waryjas, Chicago; Glenda Sanders, Los Angeles; Maren Nelson, Los Angeles; Lynn Todd, Los Angeles; Victoria Judson, Washington, D.C.; Maria Stratton, Los Angeles; Christina A. Snyder, Los Angeles; Louise Nemschoff, Beverly Hills; Nathalie Hoffman, Los Angeles; Laura Fashing, Los Angeles; Andrea Jane Grefe, Beverly Hills; Donna Harvey, Los Angeles; Helene Hahn, Burbank.

Bernadine Brandis, Burbank; Lisa Specht, Los Angeles; Patricia T. Sinclair, Los Angeles; Linda Lichter, Beverly Hills; Ann M. Hamilton, Chicago; Carol Fuchs, Beverly Hills; Anjani Mandavia, Beverly Hills.•

THE CRISIS IN ZAIRE

• Mrs. KASSEBAUM. Mr. President, I would like to express my deep concern about the situation unfolding in Zaire. Last month after intense rioting, President Mobutu responded by appointing a prominent opposition figure, Mr. Etienne Tshisekedi, as Prime Minister. President Mobutu's decision, while obviously one of desperation, did, nonetheless hold the promise that Zaire would move away from Mobutu's dictatorial lock hold on power.

Unfortunately, several days ago, President Mobutu rekindled the world's concerns by removing Mr. Tshisekedi from power. As riots in support of the Prime Minister broke out, President Mobutu asked the opposition to name another candidate, but the alliance has maintained their support for Mr. Tshisekedi.

While President Mobutu has named another Prime Minister from the opposition alliance, his dismissal of Mr. Tshisekedi is a clear indication that he is continuing to resist the calls for democracy from the people of Zaire.

Over the past several years, Mr. Mobutu's leadership and his oppression of democratic forces in Zaire has been raising serious concerns here. In this year's foreign assistance bill, we once again have placed restrictions on aid to Zaire. This year we have restricted both military and economic assistance, in an attempt to send a strong signal to President Mobutu about our concerns and support for free and fair elections.

In the recent riots the last figures are at least 17 people have been killed and about 120 have been wounded. I urge President Mobutu to stop the vio-

lence and to end his useless and futile oppression of democracy in Zaire. I would hope that in the next couple of days, our allies will join us in sending a strong signal to President Mobutu, that unless he stops resisting democracy all cooperation with Zaire will end.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received a request for a determination under rule 35 for Stuart Feldman, a member of the staff of Senator HATCH, to participate in a program in Japan, sponsored by the Japanese Ministry of Foreign Affairs, from October 19–30, 1991.

The committee determined that participation by Mr. Feldman in this program, at the expense of the Japanese Ministry of Foreign Affairs, was in the interest of the Senate and the United States.●

HEALTH CARE REFORM

● Mr. DURENBERGER. Mr. President, the issue of health care reform is a prime concern of the American people. The complexity of the issues involved has made it difficult to reach a consensus even on the nature of problem, not to mention solutions.

Efforts by journalists to study and present these issues to their readers play an important role moving us toward a common understanding and shared goals.

Recently, a series of articles entitled "Condition Critical: The Need for Reform" appeared in the Minneapolis Star Tribune by Washington Bureau Correspondent Tom Hamburger. It was an excellent presentation of the key issues facing American health care.

So that my colleagues and other readers of this RECORD can benefit from this series, I ask that it appear at this point in the RECORD.

The material follows:

[From the Star Tribune, Sept. 22, 1991]

HEALTH CARE IS IN CRISIS

(By Tom Hamburger)

WASHINGTON, DC.—The U.S. health care system is not well. The distress and hardship it creates are visible in every neighborhood.

In Minnetonka, it can be seen on the face of Francis Burd, a business owner who found his small manufacturing firm's health insurance rates jacked up 40 percent after his wife was diagnosed with a brain tumor.

On St. Paul's East Side, it's visible in the anguish of Larry Nash, 36, a hospital janitor. He watched his family's car and stereo system being repossessed as he struggled to pay his portion of a skyrocketing insurance premium. He needs the employer-sponsored insurance to pay for medication and therapy for his 10-year-old son's hyperactivity disorder.

The system's ills are illustrated by Patricia Ward of Minneapolis, a working mother of two who has delayed getting a mammogram despite a lump in her breast that she noticed months ago. "The test costs $50," she said. "That's a week's groceries. I can't see spending that on something that may or may not be serious. I won't spend money like that—not when I've got kids to feed."

And the dilemma can be heard in the boardrooms of the Dayton Hudson or Chrysler corporations, where executives speak with alarm about rising health costs that they say damage the United States' ability to compete.

Americans pay more for health care than citizens of any other country. Yet the United States ranks as one of the least healthy nations in the developed world. Our infant mortality rate is worse than 20 other nations, according to the latest comparisons. People live longer on average in 16 other countries.

A recent Harvard University study found that Americans were less satisfied with their health care system than any of 10 other industrialized nations. Eighty-nine percent said it needed "fundamental changes" or "complete rebuilding."

What has gone wrong? Why are U.S. health costs rising faster than any other country even as our health profile deteriorates?

The answers vary depending on who responds. But a growing chorus of medical experts and legislators from both parties in Congress is calling for a major overhaul.

Coming to that conclusion requires an examination of ingrained assumptions about our health system: that competition will produce the best results at the best price; that technology is the key to reducing illness and cutting costs; that providing for the uninsured drives up expenses, and that government intrusion into health care creates bloat and bureaucracy.

In fact, many of those advocating an overhaul say that, by looking at what other developed countries have done, we'll find that many of our preconceptions are wrong:

Competition in the U.S. health system hasn't reduced prices, or provided better care or more efficient operations overall. Rather, our competitive system has set up a number of perverse incentives that increase costs, without regard to health benefit.

Our embrace of high technology and medical specialization, the areas in which we lead the world, lies at the heart of sharply rising U.S. health costs. For all of their great expense and widespread use, some high-tech procedures have not made much of a dent in the country's health profile.

Denying care to the uninsured raises costs for everyone. By failing to provide access for all to preventive and primary care, we've made it difficult for the 85 million uninsured or underinsured Americans to see a physician until they are brought to the hospital with a serious ailment. By that time, the cost of treating them has soared.

The private health insurance system in the United States creates far more bureaucracy and red tape than government-run systems. A study by the General Accounting Office of Congress showed that if the United States adopted a Canadian or European health model, the savings from dealing with one (government) insurer rather than 1,200 private insurance companies would provide enough funds to place every uninsured American in a health plan.

COMPETITION DOESN'T HELP

"There aren't sufficient incentives to promote or create health," said George Halvorson, chief executive officer of Group Health Inc., Minnesota's largest health maintenance organization.

Countries with national health systems can more rationally and carefully limit use of expensive resources. And they emphasize preventive and primary care.

In the United States, it's different. "Thousands of Minnesota children do not have access to basic care for sore throats and day-to-day illnesses," Halvorson said. Yet government and private insurance will pay for a heart transplant.

"We don't have a health insurance system in this country. We have sickness insurance," Halvorson said. He's referring to a system that often fails to cover routine doctor visits and screenings. Coverage under many of the most affordable plans begins when hospitalization occurs.

At that point, our system often rewards volume. The more procedures that doctors and hospitals provide, the more money they make from insurance programs. And once patients are inside the hospital, they generally are unconcerned about cost because their insurance, government or private, pays the bills. The U.S. hospital system is, thus, inflationary at its core.

U.S. medicine is also top-heavy with highly paid specialists and facilities that specialists use.

Take the case of coronary bypass surgery. The United States has three times the number of heart surgery facilities per capita as Canada. Our 300,000 bypass operations conducted each year occur at a per-capita rate that is 10 times that of Japan and 2.6 times that of Canada. This works out well financially for hospitals and heart surgeons. But U.S. mortality rates show no significant benefit from this extensive use of the operating room.

In fact, a study by the Rand Corporation, a research institution that has investigated hospital procedures and medical questions, indicated that as many as 40 percent of the bypass surgeries may be unnecessary. The study of 386 cases found that 54 percent of the surgeries were clearly "appropriate," 14 percent were clearly inappropriate and the remainder were labeled "equivocal."

Why does this go on? In part, because the U.S. system rewards doctors and hospitals for doing expensive procedures.

The health insurance industry, along with many employers, believe that more aggressive management of medical care, including second-guessing physicians' decisions, would reduce costs and reward efficiency. Critics respond that competing insurers will never effectively control costs.

HIGH TECH IS HIGH COST

The United States is among the world's leaders in technical innovation in medicine. But the way we market our high-tech gains boosts U.S. health costs dramatically, often without attendant health benefits.

Take the case of the Magnetic Resonance Imaging (MRI) scanner. There are more MRIs in use in the United States than in all of Western Europe and Canada combined. In

fact, there are more of the $2 million machines in Minnesota than in all of Canada.

To be sure, the scans are a technological breakthrough. They use radio waves and magnetic fields to draw detailed pictures of the inside of the body. Unlike X-rays and CAT scanners, they do not expose patients to radiation. And they can be especially valuable in detecting brain tumors and spinal and joint injuries without invasive surgery.

But there is growing recognition that MRI scans are overused and, as a result, driving up health care costs. Once the machines are purchased by a hospital or clinic, administrators say they are under pressure to scan as many patients as possible in order to pay off the machine. Doctors don't object because they get paid for each procedure they perform. The hospitals make money, too.

Five million MRI tests were performed last year, at a charge of $600 to $1,000 each, adding up to $5 billion to the country's health bill, according to a New York Times estimate.

The way perverse incentives in the U.S. system inspire overuse of high tech can be seen in a New England Journal of Medicine study that examined billings by doctors who purchased X-ray or ultrasound machines. Those who brought the technology into their own offices did 4 to 4½ times as many tests as doctors who referred patients to outside radiologists. The doctors also tended to charge their patients more than the radiologists did for the same tests.

Pressure already is building for hospitals to purchase a new generation of scanners, called PET (Positive Emission Tomography) machines. The PET machine is even more expensive than the MRI, running about $5 million. It can take pictures that reveal the functioning as well as the structure of internal organs. The federal government and some major institutions, including the Mayo Clinic in Rochester, Minn., are resisting purchase of the PET. But once it becomes standard practice at elite centers, it will be difficult to resist.

Pressure for the latest gadgets is higher in the United States because our system is heavily loaded with specialists and we reward their use of the latest technology. Doctors complain that the uniquely American malpractice threat inhibits them from saying no to a test, even when its value is marginal.

While other countries tend to control the number of specialists trained as well as the amount they will be paid, there are virtually no limits in the United States.

Group Health's Halvorson bemoans the diminishing interest in primary and basic care, where doctors can do the most good for the least expense. Instead, he said, the profession is becoming overloaded with "procedure-oriented subspecialists because they can make twice as much money."

THE UNINSURED

Patricia Ward, the woman who put off the mammogram to save $50, says she will get herself checked soon. If the lump proves to be cancerous, the delay will have reduced the chances of saving her life—and increased the cost of trying.

Early detection often can eliminate cancer through relatively simple outpatient procedures. But if the cancer has spread, costs multiply.

Physicians have known for years that preventive medicine pays. Yet our system sets up barriers to receiving such care. As a result, public hospitals are overwhelmed with demands from indigent patients with ailments that often have gone too long without treatment.

About 37 million Americans are without health insurance, but that number understates the problem. A recent Census Bureau study found that more than one in four Americans went at least a month without coverage. An additional 53 million are underinsured. (In Minnesota, 370,000 people are uninsured and another 366,000 are underinsured, according to estimates by the state Health Care Access Commission).

The numbers in these categories are rising because as health costs go up, companies are reducing benefits and hiring more part-time workers who are not entitled to health insurance.

Most of the uninsured are not unemployed; more than 80 percent are jobholders or members of their families. They may work for employers who do not provide them with insurance. They may be unable to afford the subsidized premiums offered through work. They may be farmers or other self-employed workers who now find insurance priced beyond their reach.

Increasingly, they are people with chronic diseases or disabilities who are denied affordable coverage because of a "preexisting condition."

When they finally go to the hospital for expensive treatment, the cost of their care is shifted to those who pay the insurance bills. This helps explain why employer-paid health premiums have jumped 20 percent in the past three years.

The financial burden treated by the uninsured has reached the boardroom. A recent Gallup survey of chief executive officers at 1,000 of the country's largest companies found that 67 percent want government to take over coverage of the uninsured.

BUREAUCRATIC WASTE

The United States pays more for the administration of its health system than any other Western nation, up to 30 percent more, according to some estimates. This waste comes in two forms: high insurance company overhead and high billing costs for hospitals and doctors.

At Hennepin County Medical Center in Minneapolis, patients needing financial assistance are directed to an office where each must fill out 35 pages of applications and questionnaires. And Hennepin is considered to have an efficient, patient-friendly system.

We have more than 1,200 private health insurers, each selling a wide variety of policies. Hospitals and doctors have to bill each plan separately and then correspond with them again and again to assure payment.

As a result of this mass of paperwork, Hennepin County Medical Center employs 56 in its finance department, nearly all of them dedicated to billing. At Canada's Toronto Hospital, three times the size of Hennepin, there are 22 people in billing.

If the United States shifted to a government-run insurance system, the General Accounting Office estimates that the government would save $33 billion in reduced hospital and doctor costs for administration. The report said an additional $34 billion would be saved in insurance company profits and overhead.

The amount spent on insurance administration in the United States is subject to wide debate. Two Harvard Medical School professors who helped found a rapidly growing physician's reform organization say that 25 cents of every U.S. health dollar goes to administration.

The professors, David Himmelstein and Steffie Woolhandler, estimated that if the state of Minnesota had converted to a single-payer insurance system last year, it would have saved more than $2 billion in administrative expenses.

The Health Insurance Industry Association has called the Harvard duo's estimates preposterous. According to a study by the association, only 13 percent of premium costs were dedicated to administration in 1989.

Himmelstein and Woolhandler have been at the forefront of a national lobbying campaign to adopt the Canadian, single-payer model in the United States. This would require the government to set doctors' fees and provide hospital budgets. And the system would guarantee equal coverage for all.

Sound improbable? Perhaps not. While there are wide variations among proposed reforms, there is a rapidly developing consensus that the problems of the uninsured and cost control need to be addressed. Consider the history of the American Medical Association. In 1949, it spent more than $1 million to lobby against a national health insurance plan proposed by President Harry Truman. The AMA branded the plan as "socialism." This year, the AMA devoted an entire issue of its prestigious journal to the topic of health care reform. The journal's accompanying editorial argued that it's past time for the federal government to mandate health care for everyone.

"A long-term, crying need has developed into a national moral imperative and now into a pragmatic necessity as well," the editorial said. "It is no longer acceptable morally, ethically or economically for so many of our people to be medically uninsured or seriously underinsured."

THE NATIONAL HEALTH—A COMPARISON OF SYSTEMS IN MAJOR DEVELOPED COUNTRIES

Britain.—The National Health Service provides free cradle-to-grave services to 90 percent of the country's population. Financed through general taxation, the program employs more than 25,000 general practitioners and 14,000 dentists and runs more than 2,000 hospitals. Cost per person (1989): $836

Japan.—Its system is a mix of public and private doctor and hospital care and public and private health insurance. Nearly everyone is covered by some program. In general, fees are controlled by the government with medical care typically costing very little for an individual. About half the population is covered at work; they contribute about 4 percent of their salary with the company contributing another 4 percent to a government-managed program. The rest of the population pays a household premium to be covered under a national health insurance program. Hospitals are run by the government. Cost per person (1989): $1,035

Germany.—Although the system is essentially a private one, national law requires insurance coverage for about 90 percent of all Germans by one of several regulated health insurance programs. Most are covered through their employer. The insurance programs then negotiate for services from associations of private physicians and associations of nonprofit, private or community hospitals. The poor are insured under a general assistance program. Cost per person (1989): $1,232

France.—Government health insurance, funded by social security contributions deducted from paychecks, covers all residents and pays for most hospital care and doctors' office visits. Physicians in private practice receive a set fee from the government but also can charge the patient additional fees. Patients select their own physician. Cost per person (1989): $1,274

Sweden.—A national system organizes both physician services and hospital care and

is funded through general taxes. Everyone receives these services and hospital care free of charge, but people pay some portion of the costs for drugs and dental care. Patients can choose their own physicians. Cost per person (1989): $1,361

Canada.—A national system of government-financed universal health insurance provides Canadians with access to the doctor and hospital of their choice. The program, supported through general taxes and small local fees, pays physicians directly for services rendered. All hospital charges are covered. Cost per person (1989): $1,683

United States.—No national health insurance system exists, except for the poor, who are covered under state Medicaid programs, paid for by state and federal taxes, and the elderly, who are covered by Medicare, a Social Security Administration program. Most Americans receive medical insurance through their employer, either contributing to the premium or receiving it as part of their compensation. Medical services are provided by doctors in private offices on a fee-for-service basis or through health maintenance organizations where office visits are part of the program. An estimated 37 million Americans lack adequate health insurance. Cost per person (1989): $2,354

WITH COSTS RISING, DAYTON'S WORKS FOR REVISION

(By Tom Hamburger)

WASHINGTON, DC.—When Kenneth Macke took over as chairman and chief executive officer of Dayton Hudson Corp. seven years ago, he thought the company's health costs were high at $60 million a year.

Dayton's, the country's 16th-largest employer, took action. It set up a state-of-the-art self-insurance program with claims-management and utilization reviews. The company required employees to absorb some of the insurance increases. And Dayton's used its clout to bargain with hospitals and health maintenance organizations for better rates.

Despite these efforts, Dayton's health-insurance costs nearly doubled in six years, to $115 million in 1990. That year alone, health costs jumped 15 percent. Although that was well below the 23 percent increase that small U.S. companies paid on average, Macke found little solace.

"In 1985, an appendectomy cost about $2,500; today it is $6,000," he told the House Government Operations Committee this summer. "To put it in perspective, we have to sell over 39,000 Ninja Turtle action figures to pay for one appendectomy."

U.S. health expenditures totaled $675 billion in 1990, one of every nine dollars of this country's gross national product. The cost of health care for U.S. businesses nearly equals their after-tax profits.

These numbers have made Macke and his corporate team outspoken reformers. The Dayton's executives have joined state and national organizations seeking change in the U.S. health system. Macke no longer believes it can be accomplished through the free-market system or piecemeal initiatives.

"We have learned the hard way that voluntary cost-control efforts and market forces do not solve the problem," he told the House Government Operations Committee. "The cure is reform, which gives everyone access and provides only necessary quality care at the lowest cost."

Indeed, access to care is a problem for some Dayton's employees. The company employs 160,000 people. Slightly under half are not eligible for company-sponsored health insurance because they work part-time or have just started with the company.

Edwin Wingate, Dayton's senior vice president for personnel, lauded gains made by other countries when he testified in July before the House Ways and Means Committee. "There is clear evidence that Canada, England, Japan, Germany and other industrialized countries are getting greater value from health spending than we are, with little or no loss in quality of health-care delivery," Wingate said. "With each passing year, we lose international competitive strength because of these runaway costs."

[From the Star Tribune, Sept. 29, 1991]

U.S. WEIGHS BENEFITS OF SOCIALIZED MEDICINE OVER COMPETITIVE CARE

(By Tom Hamburger)

INTERNATIONAL FALLS, MN.—In the emergency room of Falls Memorial Hospital, a man leapt from his bed earlier this year after being told his skull fracture required expensive diagnostic tests.

The man had no health insurance, recalled head nurse John Gavin, and the man feared the cost of the tests. With hospital staff in pursuit, he ran for the door.

A mile north of Falls Hospital, on the other side of the Rainy River, people don't run away from medical expenses. They don't have any.

At the Fort Frances, Ontario, hospital last month, Alex Revus was recovering from colon surgery. He was sore and he had his worries, but medical bills were not among them.

Revus owed nothing for his week in the hospital. The provincial health system paid his medical costs, as the government has for all Canadians for 20 years.

The bridge that links International Falls with Fort Frances spans vast differences in health care. Those differences have become the topic of an increasingly sharp debate as the United States considers reform of its health system, the most expensive and the least popular in the developed world.

"There's a lot the U.S. could learn from Canada," said Roger Hunt, an experienced American hospital administrator who now runs Toronto's St. Michael's Hospital. Hunt said he finds the Canadian system more efficient and better able to meet community needs.

The American Medical Association, the U.S. insurance industry and a number of health policy leaders, including Sen. Dave Durenberger, R-Minn., reject suggestions that Canada is the paragon to which the United States should aspire. They contend that the Canadian economies are illusory, that medical care is unsophisticated and that research incentives have dried up.

So who's right? What do doctors and patients say? And does Canada have anything to teach us?

DOING MORE WITH LESS

Health costs and statistics for Canada and the United States looked much the same during the first two decades after World War II. But after 1971, the year that Canada fully enacted universal health insurance, the two countries diverged.

Since '71, the average lifespan of Canadians has remained narrowly ahead of the U.S. average, Canadian infant-mortality rates have fallen more rapidly and, most noticeably, Canada's medical costs have risen less quickly.

Today, the United States spends more than 12 percent of its annual income on medical care, the highest percentage in the developed world. Canadians have the second-highest cost of care, about 9 percent. Despite the disparity in outlays, Canadians have about the same incidence of serious ailments as Americans, while having more contact with their doctors.

Canadians are as likely as U.S. citizens to be admitted to a hospital. But once there, they remain twice as long. Yet the cost of their stay will be only one-third as much per day.

Canada's provincial governments pay the medical bills for all citizens. But doctors and hospital workers are not employees of the state. Canadian doctors practice privately on a fee-for-service basis, with the state replacing the role of private insurers. Patients can go to any doctor or hospital they please, giving them more freedom of choice than most subscribers to health maintenance organizations have in Minnesota.

WAITING FOR SURGERY

Two years ago, Canadians got to know the story of Charles Coleman, a 63-year-old diamond cutter living near Toronto. Coleman's doctors told him he needed coronary bypass surgery to save his life.

But the operation was postponed 11 times at Toronto's St. Michael's Hospital because of a shortage of beds.

Eight days after the operation finally was performed, Coleman died. His wife, Muriel, said that Coleman "lost his will to live" during the four-month wait.

Horror stories of delay and death on waiting lists regularly surface in Canada and receive wide attention. The Coleman case and others like it have led to reforms, but waiting in line for certain high-tech procedures remains a fact of life. Death on the waiting list is not common, but it happens.

It happens because Canada controls costs by limiting the use of expensive technology and specialized hospital services. If the United States tends to overuse high-technology medicine, the Canadians may have a shortfall.

Canadian officials emphasize that delay is not imposed on urgent or emergency cases, but as Coleman's family will tell you, delay takes its toll.

In August, candidates for elective heart surgery in Ontario could expect a three- to six-month wait for an operation. Patients with cataracts have to wait from a month to nearly a year for surgery. Hip replacements take up to a year for elective cases.

Canada concentrates its high-tech resources in big-city hospitals. So to get many sophisticated procedures, Fort Frances residents must travel to Winnipeg or Thunder Bay.

RATIONING CARE

Yes, Canada rations care. But so does the United States.

"What counts," wrote Yale University Prof. Theodore Marmor, is "not the unavoidable use of rationing of limited resources but the basis for that allocation. The United States continues to allocate by income, ability to pay and geography. As a result, our access to care and the quality of that care vary enormously and many experience long waiting periods and substandard facilities, if they can get care at all."

That point was brought home in a recent study in the Journal of the American Medical Association that found uninsured patients in U.S. hospitals were far less likely to receive certain high-cost procedures (including biopsies) compared to fully insured patients.

In Canada, rationing occurs "on the basis of perception of need," said Robert Evans, an

economist at the University of British Columbia.

Waiting more than a month for an ophthalmologist to check an eye problem was no problem for Arthur Robson, 59, who owns a printing business in downtown Toronto. "It's OK," he said, "it isn't an emergency."

When Robson was faced with an emergency—pancreatitis—he was admitted without delay to the hospital. When a drug reaction worsened his condition, he was whisked to the intensive care unit.

Canadians acknowledge frustration with the much-publicized queues for surgery, but they remain overwhelmingly satisfied with their health care. A survey last year by the Harvard School of Public Health found that Canadians were the most enthusiastic about their health care of any of 10 countries surveyed. The study found Americans the least satisfied.

MOOD SWINGS

Dr. George Crow, a general practitioner in International Falls, is not a happy doctor. "The fun has gone out of the practice of medicine," he said. ". . . We've got government and insurance companies questioning everything to do."

And small-town practice is becoming more difficult and less lucrative. So, Crow decided to move to semiretirement early. He works only two days a week at the Falls Clinic now.

Across the Rainy River, Dr. Richard Moulton is also moving into semiretirement. But his mood is quite different. "I haven't the slightest doubt that the Canadian system is better than the American or British," he said with obvious pride.

Moulton has complaints about the Canadian system, but he remains active in politics to resolve them. Because health-care financing in Canada is controlled by the state, doctors (and patients) who want to influence health budgets and policies must work through the political system.

Moulton, like Dr. Crow across the river, has been concerned with the lack of incentives to practice in rural areas. Several years ago, Moulton successfully lobbied to establish a program to pay a bonus ($40,000 over three years) to doctors willing to work in underserved areas such as Fort Frances. "It made a great difference here," Moulton said.

The contrast in moods between Crow and Moulton may seem overdrawn, but it is reflected in imprecise surveys of U.S. and Canadian doctors.

Crow's complaints are not isolated. A recent survey commissioned by the American Medical Association showed astonishing levels of dissatisfaction among U.S. doctors.

Almost 40 percent of those questioned by the Gallup organization said they probably would not go to medical school if they had it to do all over again. The U.S. doctors cited increasing paperwork demanded by myriad insurers, the threat of malpractice suits and the increasingly annoying oversight from insurance and government review panels as their chief complaints.

In Canada, however, the available evidence indicates physicians are happier in their work.

A recent survey found that two-thirds of doctors described themselves as satisfied or well satisfied, according to the Canadian Embassy in Washington. And the number of physicians leaving Canada dropped from 663 in 1978 to 386 in 1985. What's more, Canadians are competing more heavily than Americans for places in medical school.

Naturally there is dissatisfaction among Canadian doctors. During the annual fee negotiations with the provincial governments, doctors raise cries of dwindling resources and endangered patients. Surgeons always complain about scarce operating rooms and many of them were angered when the government capped full reimbursement for doctors in Ontario at $380,000 a year.

But in dozens of interviews, it was apparent that Canadian doctors feel better under their state-financed system than American doctors do under our mostly private maze of insurance schemes. There is relatively little oversight and paperwork in Canada, largely because there is only one payer for medical bills.

Take a look at the St. Frances clinic: A patient living anywhere in Canada can walk in and receive free care. He only need present his credit card-sized government health card to the receptionist. The number on the card is entered into the computer with a code showing the type of visit. At the end of the month, computer tapes are sent from Fort Frances to the provincial health insurance office in Kingston and payment is sent to the doctor within 10 days.

As on the other side of Rainy River, Canadian doctors are the highest-paid professionals in the country. In 1987, Canadian internal medicine doctors received average earnings of $179,000 a year. U.S. internists in private practice earned an average of $229,000 that year.

While the gap between U.S. and Canadian physicians may seem large, remember that Canadian professional expenses are much lower compared to those of U.S. private practitioners (35 percent of gross income compared to 44 percent in the United States).

Second, remember that Canadian doctors spend almost no time on billing while American doctors face a huge and costly task of filing multiple forms to satisfy the more than 1,200 private insurers in the United States.

What's more, Canadians pay only a fraction of malpractice insurance premiums ($1,470 in Canada compared to $15,000 in the United States).

LIMITED RESOURCES

One clear lesson from Canada is that setting health and hospital budgets encourages thrift and priority-setting. But there are cases when resources are pared too tight, said Dr. Walter Kucharczyk, the radiologist in charge of the magnetic resonance imaging (MRI) scanner at Toronto Hospital.

Kucharczyk's MRI is one of only three units serving Toronto, an area of 5 million people. In Minnesota, which has 4 million residents, there are at least a dozen scanners.

Delays for elective MRI scans at Toronto Hospital run to six months, Kucharczyk said, and the consequences are troubling. MRI scanners use radio waves and magnetic fields to draw detailed pictures of the inside of the body. They can be valuable in detecting brain tumors and spinal injuries without invasive tests.

"It happens almost every day that someone comes through and I spot something that causes me to think, 'I wish I had seen that earlier,'" Kucharczyk said.

Kucharczyk doesn't like being diverted from his job as a radiologist to develop the priority list for MRI patients: "I'm in a difficult position. . . . I'm asked to be the gatekeeper, but I have not seen the patient. It's an unpleasant aspect of my job."

Not far away, at St. Michael's Hospital, Dr. Paul Armstrong, the hospital's chief cardiologist, said that he also spends much of his time and energy in the gatekeeping task. He does not resent it, however.

"I have one position left in the coronary care unit and I have two people with equal priority I want to get in there," he said in describing the difficult questions he faces every day.

To cope, Armstrong has set up a computerized system that ranks patients. He declined to say how the system worked precisely, but he made clear that he and his colleagues have waded deep into the waters of ethical decision-making. With limited space, for example, the computer ranking might tend to favor a younger person over an older person for priority treatment.

"In the U.S., patients may not get care because of lack of financial resources," Armstrong said. In Canada, doctors are making those decisions on the basis of medical need.

"Physicians have to be responsible and accountable for setting priorities that determine who gets care," Armstrong said. "This is accepted here, I think. It's not yet accepted south the border."

ARGUMENTS ON CANADA'S HEALTH PLAN

PRO

It's less costly.—Canadians spend a smaller percentage of their annual income on health costs than U.S. citizens.

It's efficient.—Canada spends about 11 percent of its health dollars on administration; the United States spends about 24 percent.

It's healthy.—By providing free access to primary care, Canadians have improved the health profile of the nation. Infant mortality is lower in Canada and life expectancy is longer than in the United States.

It's popular.—Both doctors and patients rate the system highly. Among the general public, it rates as the best-like health system among the developed countries.

CON

Long waits.—The Canadian system rations care through long waiting lines for some high-tech procedures. It can take months for nonurgent cases to get treated for coronary surgery, eye surgery and hip replacement.

No competition.—Government involvement reduces productivity, stifles research, and slows technological advances because there aren't economic incentives to produce those advances.

It inspires abuse.—If the service is free, it will be overused by large numbers of people. The rest of the population will resent paying the bills of others.

It may not save money.—Canada has the second highest cost of medical care in the world and some people believe it is rising faster than the U.S. rate.

HOW THE CANADIAN SYSTEM WORKS

COVERAGE

All Canadian citizens are covered by provincial government health programs that meet federal standards. Care is free with no deductible or co-payment requirements. All care deemed medically necessary is fully covered. For those under age 65, coverage does to generally include drugs or nonhospital dental and eyeglass expenses.

FUNDING

Provincial governments set budgets for each hospital and negotiate and set doctor's fees with regional medical associations. The funds come from a mixture of federal funds, payroll taxes and other provincial revenue. Hospitals may expand their services, with permission from the government, by collecting donations from the private sector.

PRACTICE

Patients choose their doctors and hospitals much as they do in the U.S. system. Doctors

are private and work on a fee-for-service basis, much as they do in the United States. Canadians visit a specialist only after referral from a primary care doctor. Doctors operate freely, ordering any test or procedure they deem medically necessary.

REGULATION

Although hospitals and doctors operate privately, the government regulates the purchase and location of high-tech equipment and the number and location of medical specialists. Doctor review panels look over computerized medical records for any unusual patterns of use of certain expensive tests, unusually high surgery rates, etc.

BOISE EXPERIENCE PUTS COMPANIES' FOCUS ON CANADA

(By Tom Hamburger)

INTERNATIONAL FALLS, MN.—The Boise Cascade paper mills that straddle the Rainy River provide an ideal site from which to view the differences in cost between the Canadian and U.S. health systems.

There is no apparent difference in the relative health of employees in the nearly identical Canadian and U.S. mills.

Yet the average cost of health care imposed on Boise for its Canadian workers is less than half the cost of health benefits it pays for U.S. employees.

For U.S. workers, the company's health insurance costs an average of $2,868 per employee a year.

In Canada, the average cost per worker is $1,266.

This difference has led the hard-noised capitalists at Boise—and other multinational corporations—to look seriously at the merits of the Canadian system.

And that's rather amazing, said Boise's medical director, Dr. Jon Talsness, "considering that five years ago if you'd mentioned the Canadian system, they would have said, 'No way am I going for socialized medicine.' "

Boise is by no means endorsing single-payer health insurance, but the company has concluded that "we've got to get the U.S. system fixed," Talsness said.

Canadian and U.S. workers now pay approximately the same amount in federal and state taxes.

But the real key in making the comparison is the amount paid for health insurance premiums.

According to recent Boston Globe analysis, a Canadian earning $25,500 a year pays $6,630 in federal income taxes, which covers his health care. A similar U.S. workers pays $7,140 in taxes but also—perhaps with his employer contributing—an additional $2,000 a year for health insurance plus $360 in Social Security charges.

But it's not the $25,000-a-year working stiffs who are pushing the Canadian model in Washington. While organized labor has shown some interest, executives of major corporations, such as Chrysler's Lee Iacocca, have riveted attention on Canada.

"Business likes our system in part because it is cheaper," said Gail Tyerman of the Canadian Embassy in Washington. "But they also like it because the burden of paying for health care is spread more equitably."

Canadian health costs are lower for individuals and businesses, the congressional General Accounting Office has concluded, because Canada's administrative costs are streamlined by having only one payer for health bills—the government. Second, cost increases are dampened because the Canadians have uniform rules and they cap total expenditures for hospitals, physicians and technology.

For U.S. businesses, health costs have risen to the point where they nearly equal after-tax profits. And more than 70 percent of labor disputes in 1989 involved health benefits, according to a congressional survey.

Boise's U.S. figures include the amount paid for health insurance for each U.S. employee. Its Canadian figures include money paid directly by Boise as corporate taxes to the Ontario Health Insurance Plan as well as payroll tax paid by the company to the federal government for each employee.

Americans may worry that moving to a Canadian-style system would increase tax rates, but that's not necessarily true.

"REFUGEE" DOCTOR SAYS CARE HAS ERODED

(By Tom Hamburger)

Dr. Edward Simmons, chief orthopedic surgeon at Buffalo (N.Y.) General Hospital, is a refugee from Canada's health program. He charges the Canadian plan with causing a serious erosion in care since it was introduced in 1971.

His views represent a minority of Canadian physicians, according to surveys of doctors in Canada. But his criticisms reveal the antipathy of many medical specialists to the Canadian system. He is one of dozens of specialists who have left Canada for practices in the United States.

"Canada once had some of the highest quality of care in the world, but I don't believe you'll find that there now," Simmons said from his office in Buffalo, his home the past seven years.

By 1990, care at Canada's premier hospitals "began to deteriorate significantly," he said. He became distressed when patients who had "booked elective surgery for a certain day were canceled because there were not enough beds."

Canadian doctors are frustrated because they "can't keep up" with technological developments in the United States, said Simmons. He said the system's ills can be seen in the regular flow of patients he receives from his homeland.

But if Simmons gets a substantial number of patients from Canada, his experience is unusual. After reviewing the records of a dozen border hospitals in the United States last year, the U.S. Commission on Comprehensive Health Care found "no evidence that substantial numbers of Canadians are seeking care at American medical centers."

Kennth Whitehouse of New Market, Ontario, is the epitome of the Canadian conservative. He is a bar owner and entrepreneur who admires Conservative Prime Minister Brian Mulroney and complains loudly about taxes, government destruction of the work ethic and the dangers of trade unionism.

Yet when it comes to medicine, Whitehouse is a raving socialist.

"I'm an avid supporter of our health system," he said. "We've got a lot of things to worry about in Canada, but health care isn't one of them. Everybody is eligible. The self-employed carpenter has the same care as the guy from a big company."

Said Whitehouse: "It's the one thing the government does well."

Dr. Alan Hudson, a neurosurgeon and the new chief executive officer of Toronto Hospital, talks with pride about his hospital's international reputation and about the benefits of a national health system that is available to all citizens, regardless of income or insurance status.

But in the course of a discussion, Hudson's enthusiasm gives way to unpleasant realities facing Canadian hospital administrators.

Just this month, Hudson, like other administrators, was forced to announce likely plans for staff reductions and closure of some of Toronto Hospital's 1,400 beds.

Over the long haul, Hudson and other administrators will have to consider closing whole departments of the hospital that may duplicate services provided by other nearby hospitals.

"We cannot be all things to all people anymore," he said. "Our mission will still be to care for patients, but we will do it in a less broad fashion. We will set priorities."

Hospitals need to develop specialities and expensive technology will be clustered in major cities at designated "centers of excellence."

Generally, the physicians working at Toronto Hospital are content to remain in Canada and prefer it to the U.S. system. But in the past few years, Hudson acknowledged, he has lost half a dozen neurosurgery residents to the United States, where "they get great positions with top-notch equipment."

He recalled with a sigh the departure in the past two years of two surgeons who had trained and worked at Toronto Hospital. "They left for money," he said. "It broke my heart to see those chaps go."

You might think that Kenneth White, administrator of the hospital at Fort Frances, Ontario, would be a bit chagrined with comparisons to the nearest hospital, Falls Medical Center across the river at International Falls, Minn.

The Falls hospital has more modern equipment, including a computerized axial tomography (CAT) scanner that can be more useful than single X-rays in spotting internal medical problems. "We'd never get a CAT scanner," said White, noting that the government will only approve purchase of CAT scanners in hospitals serving 300,000 people or more.

That might upset U.S. hospital administrators, who often feel compelled to purchase high-tech equipment to stay alive in the competitive battle for doctors and patients.

But White said he is not frustrated by the Canadian government position that the redundant purchase of high-tech equipment is one of the reasons costs rise so quickly in the United States. Said White: "I think it's ludicrous for every hospital to get such expensive machinery."

In the view of the U.S. insurance industry, advocates of the Canadian system engaged in "magical thinking."

That's what Carl Schramm, president of the Health Insurance Association of America, labeled an analysis by the congressional General Accounting Office that showed big savings from the Canadian model.

Schramm charged that advocates of a Canadian-style system routinely overstate the amount of administrative savings and ignore some of the depressing realities of state-run systems.

He said bureaucratic budgetary approaches to health care lead to long lines, discourage innovation and encourage obsolescence.

CURE IS ELUSIVE

(By Tom Hamburger)

Washington, DC.—If you've been wondering why U.S. medical bills are the highest in the world and why it's so difficult to reduce them, consider Blue Cross and Blue Shield of Minnesota.

The State's largest health insurer employs 2,600 workers. In Ontario, Canada, the government insurance plan covers six times as many people as Minnesota's Blues but employs only 1,500 to run it.

The difference provides a key argument for moving to a state-run insurance system. but it also explains the political impediments to such a move.

The insurance industry employs millions across the country and has financial and political clout in every legislative district, every state capital and in Washington, where in the last election alone it contributed more than $4 million to congressional candidates.

The U.S. system that has spawned 1,200 health insurance companies also provides comfortable profits to private hospitals, doctors, administrators, drug companies and medical equipment manufacturers. Health care is a $670-billion-a-year giant with many fat appendages.

Blue Cross of Minnesota spokesman Earl Johnston describes U.S. health care as "complex and labor-intensive," but "this pluralism provides a broader array of technologies and services and more room for flexibility and innovation."

Indeed, for those who are well-insured, U.S. care is the most technologically advanced in the world. And the insurance system, until now, has paid the bills for most people.

But discontent is rising. The country has awakened with alarm to the realization that costs are out of control. In a New York Times/CBS poll last month, 79 percent of those surveyed said the U.S. system is seriously sick. A Wall Street Journal poll found 69 percent of those surveyed (including 62 percent of conservatives) favored providing health care to everyone along the lines of the Canadian system—even if it requires a tax increase.

But significant change isn't coming soon. Not according to such health policy leaders as Sen. Dave Durenberger, R-Minn., and Senate Majority Leader George Mitchell, D-Maine. They say it could be a decade before we see comprehensive reform.

But if everyone from left-leaning Democrat Sen. Paul Wellstone of Minnesota to conservative Republican Rep. Newt Gingrich of Georgia is demanding change, why is there legislative gridlock?

Robert Crittenden, a health adviser to the National Governors' Association, told a policy journal recently that "when tackling vested interests, even having 90 percent of the public wanting change is not enough."

Consider what reform advocates faced in the Minnesota Legislature last year. "There were more than 70 full-time lobbyists out at the Capitol," said Rep. Paul Ogren, DFL-Aitkin. He said the industry succeeded in watering down universal health care legislation approved by the Legislature last year and it pressed successfully for the governor's veto. (The governor's office said the veto was decided independent of any lobbying).

"They have clout because of their campaign contributions and because they represent many thousands of independent insurance agents in every district," Ogren said.

POWER POLITICS

In Washington, advocates of a Canadian-style system also confront the health lobby's power.

"We're talking about industries with trillions of assets and they would clearly suffer under a Canadian-style program," said Dr. David Himmelstein, a Harvard public health professor and a leading advocate of the Canadian system. "They have enormous clout that goes deeply into the society."

Even moderate proposals for change face the gauntlet of industry groups. Sen. Edward Kennedy, D-Mass., can tell you about it. He joined Majority Leader Mitchell this year in introducing a modest overhaul of the system that would help the uninsured by requiring most companies to offer health benefits or pay into a public insurance pool. The bill would provide universal coverage but it is so lacking in structural reform that Kennedy rejected it 20 years ago when a similar version was proposed by President Richard Nixon.

But even that mild consensus proposal, which has been endorsed by some labor and business groups, faces significant political opposition. After two years of stroking labor, the insurance and health care industries, Mitchell said that passing the bill could still take as long as it took to pass acid rain legislation—nine years of debate and cajoling.

As in the acid rain debate, the conflicts are strong. For example, small-business people oppose requirements that they purchase insurance. Conservatives fear higher taxes. Labor contends that too large a portion of insurance costs may be shifted to workers.

FLUID SITUATION

While senior members of Congress shy from national insurance legislation, younger members are gravitating toward it.

"The situation is very fluid," said one congressional staffer. "Members are slack-jawed at the strong messages they are getting from constituents about health care."

Rep. Martin Russo, D-Ill., has picked up 57 cosponsors for his Canadian-style bill. One Democratic presidential candidate, Sen. Robert Kerrey, D-Neb., has introduced legislation that would lead to a Canadian-style system. Others, including Iowa Sen. Tom Harkin and Arkansas Gov. Bill Clinton, are studying it. On the Hill, several legislators, including Sens. Thomas Daschle, D-S.D., and James Jefford, R-Vt., are considering legislation that draws on the Canadian experience.

Cast off fear of offending entrenched interests, exhorts Yale professor Theodore Marmor, who visits Washington frequently to discuss the economics of health care. "Why is it so difficult for us to admit we can learn from other countries?"

He contends that health costs can be reduced only through a system that concentrates political and financial authority to set budgets for hospitals and doctor's fees.

"We need a change in the rules of the game," Marmor told Congress. "Not just tinkering, but far-reaching change."

INCREMENTAL STEPS

Tinkering, however, is closer to what Texas Democrat Lloyd Bentsen, chairman of the Senate Finance Committee, and Durenberger have in mind.

Bentsen said that what's really needed is "to take the system apart and put it back together again." But Bentsen said that can't be done without presidential leadership. Political caution, however, has kept President Bush from saying what his plan would be even though he made a campaign promise in 1988 to "provide access to health care for all Americans." In the meantime, Bentsen, like Durenberger, urges incremental reform.

Both senators, key participants in Finance Committee health deliberations, received more of their political action committee contributions in their last campaigns from insurance and health care interests than any other industrial sectors.

This year, Durenberger plans to sponsor legislation to subsidize insurance for small businesses and to change the rules for insuring small groups of employees. Durenberger also advocates malpractice insurance reform and tighter regulation of health insurance sales. The industry's Washington representatives have already agreed in principle—but not in detail—to these steps.

Like the insurance and health industries, Durenberger encourages looking to places such as Minnesota where "managed care" plans have reduced costs. Under such programs, insurers and private companies hire experts who supervise and often second-guess medical decisions. Health maintenance organizations use managed care techniques, and their average rates are running about $800 a year less than conventional coverage.

Critics argue that competing insurers won't be able to control costs effectively over the long haul. They say that managed care just adds another layer of administrators to an already bureaucratized business without dealing effectively with the core reasons for runaway health costs.

UNIQUE HISTORY

Managed care is just the latest wrinkle in America's unique health insurance system. Our method of getting health coverage through work developed accidentally during World War II. As the country was girding for combat, the War Labor Board placed a ceiling on wages. Unions then asked for "hidden raises" in the form of company-sponsored health plans.

For decades, the system worked well. Large companies insured workers as a matter of course. Although some smaller ones never did, today more than 150 million Americans are covered through work-related plans.

For years, companies saw health insurance as an invisible cost. But during the 1980s the costs became more and more visible. A recent survey of health insurance at large and medium-sized firms showed that costs to these companies rose 46 percent from 1988 to 1990. And the rates are still climbing. Now, those companies have joined the chorus of reform.

Other countries evolved far differently. Where the United States has 1,200 competing insurers, other developed nations have standard universal coverage with centralized mechanisms to control costs.

So there are choices. Adopt a Canadian-style system and the United States might check its double-digit annual health cost increase while providing access to the uninsured. But this could mean more waiting for certain procedures and new technologies.

Health Secretary Louis Sullivan and others say we should preserve our competitive system and move to gradual reform using managed care techniques.

There is, at least, near-unanimous sentiment that something must be done. Health care costs are rising more than 10 percent a year, twice the rate of economic growth. Without change, the number of people without insurance probably will double in five years, to 75 million. U.S. products most likely will become less competitive and more workers will be pushed toward poverty by the burden of health costs.

Which route to reform? It's a choice the country will soon have to make.•

NATIONAL BIBLE WEEK

• Mr. GRASSLEY. Mr. President, I rise today to give honor to a book that has influenced more decisions and changed more lives than any other book of antiquity.

One of its distinguished authors said of this book, that its purpose is "for at-

taining wisdom and discipline; for understanding words of insight; for acquiring a disciplined and prudent life," and for "doing what is right and fair; for giving prudence to the simple, knowledge and discretion to the young."

Those goals, Mr. President, are the goals of wise legislators; and this book to which I refer is the Bible.

Wise men throughout history have turned to it for counsel in dark times. Presidents Washington and Lincoln turned to it for comfort and direction in times of crisis. Monuments around our Nation's Capitol give homage to its words and parents teach it to their children.

Mr. President, the Bible gives foundation to the deepest principles of our national heritage. The dignity of man has its foundation in the truth that man is created "In the image of God."

We have commemorative legislation on a daily basis in the Senate. It is fitting that we have National Bible Week to draw attention to the chief foundation of our Judeo-Christian heritage. I am pleased that those who originated this effort are nonsectarian and nongovernmental and I am pleased to rise in honor of this great book.

In closing, Mr. President, it is fitting for us to remember the words of the psalmist who said, "Your word is a lamp to my feet and a light for my path" and "the unfolding of your words gives light; it gives understanding to the simple."●

BREMWOOD LUTHERAN CHILDREN'S HOME, WAVERLY, IA

●Mr. GRASSLEY. Mr. President, I would like to say a few words about Bremwood Lutheran Children's Home of Waverly, IA.

Bremwood is the oldest private child care institution west of the Mississippi River. It was established during the Civil War to care for orphaned children and for 90 years was home to the parentless, the deserted, and the neglected.

As the number of orphaned children decreased, Bremwood responded to the emergence of a new concern—youth with emotional problems. In 1953, it became the first accredited psychiatric residential treatment center in Iowa for youth with emotional problems. Since that time, the Children's Home has gained a national reputation for excellence in the treatment of teenagers with severe emotional challenges.

Bremwood has been very successful with its students. The average length of stay is 13.7 months. Their referrals have outnumbered their placement openings 4 to 1. During this past year, 97 youths were served. Some comments from the students have been "You helped me to trust again." "You gave me a chance * * * and hope", and "You saved my life."

Mr. President, I believe you can see Bremwood has given much to the people of Iowa.●

INCREASE IN PERSONAL EXEMPTION

● Mr. D'AMATO. Mr. President, recently I joined a number of colleagues in cosponsoring S. 152, a bill to increase the personal exemption from $2,150 to $4,000. I took this action in recognition of the great extent to which the personal exemption has failed to keep pace with inflation over the years.

Today, I rise to cosponsor a related bill, S. 701. This bill will raise the exemption for dependent children—under age 18—$3,500 per dependent. I have endorsed this second, more targeted, exemption change to highlight the fact that we need to design tax policies to encourage and reward the millions of hard working Americans who struggle to pay taxes while they raise families.

The 1980's saw an unprecedented explosion in economic growth, set off by the historic tax reductions of 10 years ago and tax reform of 5 years ago. The economic equation seems so compelling: lowering burdensome taxes increases economic investment, creating higher growth rates, and more jobs.

Unfortunately, we seem to be losing our way lately. The last few years have seen only tax increases, primarily through annual tax increases under the guise of budget reconciliation. Given this negative economic stimulus, it is not surprising that we have slipped into a period of economic uncertainty.

Instead, we in Congress need to take action to increase spending power and consumer confidence to reinvigorate our economy. As before, the prescription should be to let individuals keep more out of each dollar that they earn. An increase in the personal exemption is a tax cut for every working American. Therefore, for sound economic policy reasons, I support raising the personal exemption.

I also endorse this provision out of fairness to families. It is commendable that we have recently adopted the policy of indexing the personal exemption to the inflation rate. Unfortunately, as many families are finding out, costs of raising a family and maintaining a household often outpace inflation. Furthermore, the personal exemption did not keep pace with inflation in the long period prior to indexing. As Senator COATS pointed out when introducing S. 152, the personal exemption would have to be $6,184 today to offset the same percentage of family income it did in 1950. To some observers, this is merely a statistical analysis. To the average family struggling to make ends meet, however, the costs of living and raising a family are a daily reality.

For both of the reasons cited above, I add my support to an increase in the personal exemption and urge my colleagues to vote for such a provision the next time the Senate takes up a tax bill.●

THE SURFACE TRANSPORTATION ACT

Mr. MOYNIHAN. Mr. President, I learned, with a measure of distress, just this moment that the distinguished Republican leader was required, at the behest of a Member from the other side, to object to the second reading of H.R. 2950, the Intermodal Surface Transportation Infrastructure Act of 1991.

We are now approaching the second half of this month of October. At the end of September, the Federal highway and mass transit programs ended. They expired. And there are, at this point, no successors.

Now the Senate, to its credit, passed its legislation, the Surface Transportation Efficiency Act, in June by a vote of 91 to 7. Since then, and perhaps I ought not to comment, we spent a good 3 months saying "When will the House act?" Well, the House did act this week. On Wednesday, by a very resounding 343 votes to 83, they passed a comparable bill. It arrived in the Senate today. That is not easy, given the size and importance of this legislation.

Mr. John H. Cushman, Jr., in the New York Times restated in his account of the passage of the House bill that this is a program that touches the lives of everyone. Anyone who has ever got into an automobile, on to a bus, into a subway, has been affected by this program and will be affected by this legislation.

Four years ago, it fell to me to manage the 1987 Surface Transportation bill on the Senate floor. At that time, I said, with some repetition, that the bill we were then dealing with would be the last bill of the Interstate era.

That began during the Eisenhower administration, with the Federal-Aid Highway Act of 1956. That legislation established a gasoline tax and a trust fund to move forward with the Interstate program originally authorized in 1944 under President Roosevelt.

The interstate that was the largest public works program in the history of the world and incomparably the most expensive. We had thought originally it would take 13 years and cost $27.5 billion. It will have taken 40 and cost near to half a trillion.

Indeed, in the process the program got out of control. The construction cost index over this period has grown 551 percent, almost twice the Consumer Price Index—greatly straining the resources of States, and changing the whole country. That is what comes of treating public moneys as a free good.

This week's Economist described how it changed the country—in many ways for the better, but not in every way.

By the turn of the century, Mr. President—we will find ourselves importing two-thirds of our petroleum and one-third of our automobiles. That is what comes of hugely overpriced construction—and not durable. There are roads built in the Roman Empire which are used daily in Europe today. And yet in this morning's New York Times, you can read Mr. Anthony Lewis talking about our crumbling highways.

If we just built them, why are they crumbling? Perhaps it is because we did not build them very well. We certainly built them at great cost. And now we face the prospect that we will not be continuing.

Some time ago I commented to those persons who are collectively described in Washington—and this is not my term—as the "highway lobby"—I said keep in mind that the era of dam building has come and gone in our country, and the era of massive highway construction may have come and gone as well.

Here is our bill that has just been objected to by my friend, the Republican leader. And we are running out of money in what is left in the State accounts. This very week our good friend, the junior Senator and former Governor from Missouri, Senator BOND, said Missouri is running out of money. There will be no program in his State. If you would like to see some unemployment this winter, this is a formula for doing so. If this is a secret strategy on the other side of the aisle for getting extended unemployment benefits, it will work fine.

I have here, sir, a list of the States that have, detailing the amount of unobligated contract authority remaining to them from apportionments authorized under the previous legislation. A large number of States—my own included—have less than 4 months. And before you run out and spend the last nickel, the State controller will say, "No, you cannot commit more." So it is actually less than 4 months.

Mr. President, I ask unanimous consent this list of States be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNOBLIGATED CONTRACT AUTHORITY AVAILABLE TO THE STATES FOR FISCAL YEAR 1992

[Estimated as of August 19, 1991]

State	Unobligated authority (millions)	Days of remaining authority at 1991 rate of expenditure
More than 8 months:		
Louisiana	$263.0	391
South Carolina	218.1	378
Vermont	73.7	340
West Virginia	102.2	320
New Hampshire	46.8	312
Delaware	43.0	308
Massachusetts	703.7	270
Oklahoma	135.3	269
Minnesota	138.8	262
Virginia	192.6	260

UNOBLIGATED CONTRACT AUTHORITY AVAILABLE TO THE STATES FOR FISCAL YEAR 1992—Continued

[Estimated as of August 19, 1991]

State	Unobligated authority (millions)	Days of remaining authority at 1991 rate of expenditure
Kansas	96.8	255
Utah	67.7	255
4 to 8 months:		
Arizona	122.2	241
Maine	41.1	232
Georgia	243.8	227
North Carolina	204.1	222
Ohio	261.1	220
Texas	432.6	202
Washington	156.1	199
Pennsylvania	279.4	199
South Dakota	43.7	198
Indiana	143.5	192
Mississippi	73.9	188
Montana	54.3	180
Nebraska	45.1	173
California	517.5	171
New Jersey	193.5	165
Rhode Island	51.3	162
Florida	223.7	162
Tennessee	99.4	162
Missouri	119.8	158
Iowa	67.0	150
Wisconsin	86.9	150
Maryland	115.8	146
District of Columbia	44.6	144
Kentucky	67.3	143
Arkansas	57.6	138
Michigan	128.2	136
Nevada	26.5	128
Less than 4 months:		
North Dakota	24.5	118
New York	248.2	117
Alabama	77.9	116
Wyoming	26.0	115
Oregon	44.7	108
Colorado	59.7	105
Hawaii	41.4	98
Alaska	40.8	96
New Mexico	27.7	92
Illinois	102.6	86
Idaho	16.7	78
Connecticut	88.3	72

Mr. MOYNIHAN. Mr. President, if you would like to see this recession become a depression, just put a stop to the bill. But this is not job-creating legislation. This is investment legislation.

The Senate talked about productivity, talked about cost consciousness, about cost effectiveness. We talked about States making decisions about the optimal use of this scarce resource and living with the outcome. But this legislation provides needed investment and if it suddenly should cease, it might never start up again.

I would like to say to those persons—I speak as chairman of the Subcommittee on Water Resources, Transportation and Infrastructure and I shall be the chairman of the conferees on the Senate side, just as our exceptionally able Presiding Officer was the chairman for the Clean Air Act last year—it may be that we will not have a bill. If you have just lived all your life and there has always been a highway bill, you cannot perhaps imagine that there will not one. Think again. Think when is the last time a huge river in the United States was dammed up by a huge enterprise of the Corps of Engineers or the Bureau of Reclamation. Not for a long time. How can we remember them?

This program, too, can go the way of dam building. And if it will not be because the Senate or House or the committee failed in their responsibility; it is because individual Senators. We have quite frankly said of the House they have not done their work on what will be perhaps the single most important measure to pass in this session of the 102d Congress. We have been pointing our fingers across the Capitol. But now the House bill has come here and an objection has been heard on that side. Not from our conferees. Our conferees are bipartisan. This bill passed 91 to 8. We are in complete accord with committee members, but individuals may think otherwise, and if they do, Mr. President, there may not be a surface transportation act this year. We may find ourselves facing the fact that given the administration's decision to oppose the House bill, there may not be one ever again.

Mr. President, I see no other Senator seeking recognition and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CIVIL RIGHTS ACT OF 1991

Mr. DANFORTH. Mr. President, I call for the regular order.

The PRESIDING OFFICER. The clerk will report S. 1745.

The legislative clerk read as follows:

A bill (S. 1745) to amend the Civil Rights Act of 1964, to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 1274

Mr. DANFORTH. Mr. President, on behalf of myself and Senators KENNEDY, DOLE, MITCHELL, HATCH, THURMOND, CHAFEE, COHEN, DURENBERGER, HATFIELD, JEFFORDS, SPECTER, DIXON, BOND, DODD, D'AMATO, EXON, DOMENICI, GRAHAM, GARN, GORE, GORTON, LIEBERMAN, KASSEBAUM, PELL, MCCAIN, ROBB, MURKOWSKI, ROTH, RUDMAN, SEYMOUR, SIMPSON, STEVENS, WARNER, and LEAHY, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislation clerk read as follows:

The Senator from Missouri [Mr. DANFORTH], for himself, Mr. KENNEDY, Mr. DOLE, Mr. MITCHELL, Mr. HATCH, Mr. THURMOND, Mr. CHAFEE, Mr. COHEN, Mr. DURENBERGER, Mr. HATFIELD, Mr. JEFFORDS, Mr. SPECTER, Mr. DIXON, Mr. BOND, Mr. DODD, Mr. D'AMATO, Mr. EXON, Mr. DOMENICI, Mr. GRAHAM, Mr. GARN, Mr. GORE, Mr. GORTON, Mr. LIEBERMAN, Mrs. KASSEBAUM, Mr. PELL, Mr. MCCAIN, Mr. ROBB, Mr. MURKOWSKI, Mr.

ROTH, Mr. RUDMAN, Mr. SEYMOUR, Mr. SIMPSON, Mr. STEVENS, Mr. WARNER, and Mr. LEAHY, proposes an amendment numbered 1274.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

SEC. 4. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.".

SEC. 5. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.—

"(1) CIVIL RIGHTS.—In an action brought by a complaining party under section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703 or 704 of the Act (42 U.S.C. 2000e–2 or 2000e–3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(2) DISABILITY.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a))) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 102 of the Act (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(3) REASONABLE ACCOMMODATION AND GOOD FAITH EFFORT.—In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

"(b) COMPENSATORY AND PUNITIVE DAMAGES.—

"(1) DETERMINATION OF PUNITIVE DAMAGES.—A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES.—Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.—The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed—

"(A) in the case of a respondent who has more than 15 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

"(4) CONSTRUCTION.—Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

"(c) JURY TRIAL.—If a complaining party seeks compensatory or punitive damages under this section—

"(1) any party may demand a trial by jury; and

"(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

"(d) DEFINITIONS.—As used in this section:

"(1) COMPLAINING PARTY.—The term 'complaining party' means—

"(A) in the case of a person seeking to bring an action under subsection (a)(1), a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

"(B) in the case of a person seeking to bring an action under subsection (a)(2), a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(2) DISCRIMINATORY PRACTICE.—The term 'discriminatory practice' means the discrimination described in paragraph (1), or the disparate treatment or the violation described in paragraph (2), of subsection (a).

SEC. 6. ATTORNEY'S FEES.

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting ", 1981A" after "1981".

SEC. 7. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 717.".

SEC. 8. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by adding at the end the following new subsection:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—

"(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

"(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

"(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

"(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of 'alternative business practice'.

"(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.".

SEC. 9. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by section 8) is further amended by adding at the end the following new subsection:

"(l) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.".

SEC. 10. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by sections 8 and 9) is further amended by adding at the end the following new subsection:

"(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e–5(g)) is amended—

(1) by designating the first through third sentences as paragraph (1);

(2) by designating the fourth sentence as paragraph (2)(A) and indenting accordingly; and

(3) by adding at the end the following new subparagraph:

"(B) On a claim in which an individual proves a violation under section 703(m) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

"(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under this section 703(m) and

"(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).".

SEC. 11. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) (as amended by sections 8, 9, and 10 of this Act) is further amended by adding at the end the following new subsection:

"(n)(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

"(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

"(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

"(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

"(II) a reasonable opportunity to present objections to such judgment or order; or

"(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

"(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

"(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 12. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) DEFINITION OF EMPLOYEE.—Section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) and section 101(4) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(4)) are each amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.".

(b) EXEMPTION.—

(1) CIVIL RIGHTS ACT OF 1964.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) is amended—

(A) by inserting "(a)" after "SEC. 702."; and

(B) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

"(c)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Sections 703 and 704 shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

"(A) the interrelation of operations;

"(B) the common management;

"(C) the centralized control of labor relations; and

"(D) the common ownership or financial control,

of the employer and the corporation.".

(2) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) COVERED ENTITIES IN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

"(2) CONTROL OF CORPORATION.—

"(A) PRESUMPTION.—If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(B) EXCEPTION.—This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(C) DETERMINATION.—For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control,

of the employer and the corporation.".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

SEC. 13. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraph:

"(2) In exercising its powers under this title, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

"(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

"(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this title or such law, as the case may be.".

SEC. 14. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended—

(1) by inserting "(1)" before "A charge under this section"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.".

SEC. 15. AUTHORIZING AWARD OF EXPERT FEES.

(a) REVISED STATUTES.—Section 722 of the Revised Statutes is amended—

(1) by designating the first and second sentences as subsections (a) and (b), respectively, and indenting accordingly; and

(2) by adding at the end the following new subsection:

"(c) In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of sections 1977 or 1977a of the Revised Statutes, the court, in its discretion, may include expert fees as part of the attorney's fee.".

(b) CIVIL RIGHTS ACT OF 1964.—Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended by inserting "(including expert fees)" after "attorney's fee".

SEC. 16. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection (c), by striking "thirty days" and inserting "90 days"; and

(2) in subsection (d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.".

SEC. 17. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking paragraph (2);

(2) by striking the paragraph designation in paragraph (1);

(3) by striking "Sections 6 and" and inserting "Section"; and

(4) by adding at the end the following:

"If a charge filed with the Commission under this Act is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 11(a) against the respondent named in the charge within 90 days after the date of the receipt of such notice.".

SEC. 18. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this Act shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

SEC. 19. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) COMMITMENT TO RULE XLII.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment,

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(2) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this Act, the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(3) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to Senate Resolution 338, Eighty-eighth Congress, as amended, or such other entity as the Senate may designate.

(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under the Americans with Disabilities Act of 1990 shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) PROPOSED REMEDIES AND PROCEDURES.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(7) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraphs (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraphs (1), (3), (4), (5), (6)(B), and (6)(C) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988), as incorporated into the Rules of the House of Representatives of the One Hundred Second Congress as Rule LI, or any other provision that continues in effect the provisions of such resolution.

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this Act and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and proce-

dures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of title VII for the Civil Rights Act of 1964 (42 U.S.C. 2000e–16).

SEC. 20. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this Act.

SEC. 21. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 22. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

(b) CERTAIN DISPARATE IMPACT CASES.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the attached interpretive memorandum be printed in the RECORD.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

INTERPRETIVE MEMORANDUM

The final compromise on S. 1745 agreed to by several Senate sponsors, including Senators DANFORTH, KENNEDY, and DOLE, and the Administration states that with respect to Wards Cove—Business necessity/cumulation/alternative business practice—the exclusive legislative history is as follows:

The terms "business necessity" and "job related" are intended to reflect the concepts enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989).

When a decision-making process includes particular, functionally-integrated practices which are components of the same criterion, standard, method of administration, or test, such as the height and weight requirements designed to measure strength in *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977), the particular, functionally-integrated practices may be analyzed as one employment practice.

Mr. DANFORTH. Mr. President, this is a substitute for the civil rights bill, and this is the work product that has been put together after countless hours of negotiations that have involved the minority leader, Senator DOLE, representatives of the White House, particularly Boyden Gray, the Legal Counsel of the White House, Senator KENNEDY, and others.

Mr. President, for nearly 2 years many of us have been attempting to put together a civil rights bill that would redress problems created by the Supreme Court of 1989, particularly a bill that would reinstate the Griggs decision and that would overrule the Wards Cove decision.

This amendment would do that. It has been put together after painstaking negotiations involving a number of people. This morning the President met with Senator DOLE and me, and I can tell the Senate that the President's attitude toward this compromise was one of genuine elation.

We have resolved the problem of legal redress toward discrimination in the work force. We have provided, for the first time, a remedy for women who have been harassed on the job, a remedy of damages, and we have done so in a way that satisfies the administration as not constituting quota legislation. The position that the administration now takes is that this is not a quota bill.

To me, Mr. President, the significance of this compromise is far greater than the wording of the amendment. The significance is that by entering into this compromise, which encompasses the administration and Senator DOLE, Senator MITCHELL, Senator KENNEDY and others, we have taken the race issue out of the political arena, and we have recreated a bipartisan consensus on the issue of civil rights. If there is any issue before the country that demands a national consensus, it is civil rights. And if there is any issue that should not be one of partisan wrangling, it is civil rights. And for that reason, it is especially gratifying that this compromise has been reached.

There is now no reason why the compromise that has just been introduced will not become law. The only threat really that I see is one of mischief making, namely, that Senators will attempt to offer very popular sounding amendments which would kill the deal. And, of course, the other possibility is that the House of Representatives will kill it. But as I understand it, the initial feedback from the House has been good.

It is my hope that the amendment in its present form will be enacted into law. It is my hope that the House will, in turn, vote to agree to this amendment, to the bill as amended by this amendment, and that we will then send it to the President for his signature.

This long ordeal on civil rights is over. We are ready, Mr. President, to reestablish the consensus on civil rights, which is so important to our Nation.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I know the Presiding Officer has other pressing commitments, and I appreciate his willingness to accommodate the Senator from Missouri. I just say, as I will say in more detail on Monday, it certainly is a tribute to the steadfast work of the distinguished Senator from Missouri, Senator DANFORTH. And I applaud him for bringing nearly all of us together in the U.S. Senate on this very important legislation. It is important legislation.

I think, with the President on board, enthusiastically on board, there is no doubt in my mind that we can probably pass this legislation, hopefully, if not Monday night, sometime Tuesday.

Finally, I just urge my colleagues, particularly on my side of the aisle, that if it is a deal-breaker amendment, it is going to be very difficult for some of us to support it. We want to get a civil rights bill. This is our opportunity. We ought to make the most of it. We ought to send it to the House, hope the House will take the Senate bill, and that it will go to the President within the next couple of weeks.

I thank the Chair.

ORDERS FOR MONDAY, OCTOBER 28, 1991

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand adjourned until 2 p.m. on Monday, October 28; that when the Senate reconvenes on Monday, October 28, the Journal of the proceedings be deemed to have been approved to date, the call of the calendar be waived, no motions or resolutions come over under the rule, and that the morning hour be deemed to have expired; and I further ask unanimous consent that, following the time for the two leaders, there be a period for morning business not to extend beyond 2:30 p.m., with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL MONDAY, OCTOBER 28, 1991, AT 2 P.M.

Mr. DOLE. Mr. President, if there is no further business today, I now ask unanimous consent that the Senate stand adjourned as previously ordered.

There being no objection, the Senate, at 6:01 p.m., adjourned until Monday, October 28, 1991, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate October 25, 1991:

DEPARTMENT OF JUSTICE

WILLIAM PELHAM BARR, OF VIRGINIA, TO BE ATTORNEY GENERAL.

DEPARTMENT OF STATE

THE FOLLOWING NAMED PERSONS TO BE REPRESENTATIVES AND ALTERNATE REPRESENTATIVES OF THE UNITED STATES OF AMERICA TO THE 46TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS:

REPRESENTATIVES:

THOMAS R. PICKERING, OF NEW JERSEY.
ALEXANDER FLETCHER WATSON, OF MASSACHUSETTS.
JOSEPH VERNER REED, JR., OF CONNECTICUT.
DAN BURTON, OF INDIANA.
MERVYN M. DYMALLY, OF CALIFORNIA.

ALTERNATE REPRESENTATIVES:

GEORGE EDWARD MOOSE, OF MARYLAND.
JONATHAN MOORE, OF MASSACHUSETTS.
SHIRIN RAZIUDDIN TAHIR-KHELI, OF PENNSYLVANIA.
OSCAR PADILLA, OF CALIFORNIA.
MARGARETTA F. ROCKEFELLER, OF NEW YORK.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

WILEY T. BUCHANAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING MAY 19, 1996. VICE EDITH COLVARD CRUTCHER, TERM EXPIRED.

WITHDRAWAL

Executive message transmitted by the President to the Senate on October 25, 1991, withdrawing from further Senate consideration the following nomination:

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

JOHN ASHCROFT, OF MISSOURI, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 1993, VICE TERRY EDWARD BRANSTAD, TERM EXPIRED, WHICH WAS SENT TO THE SENATE ON JANUARY 4, 1991.